

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908.

No. ~~NA~~ 33

HARRY W. DICKERMAN, TRUSTEE OF THE SECOND
NATIONAL BANK OF BROOKFORD, ILLINOIS, ET AL.
PETITIONERS,

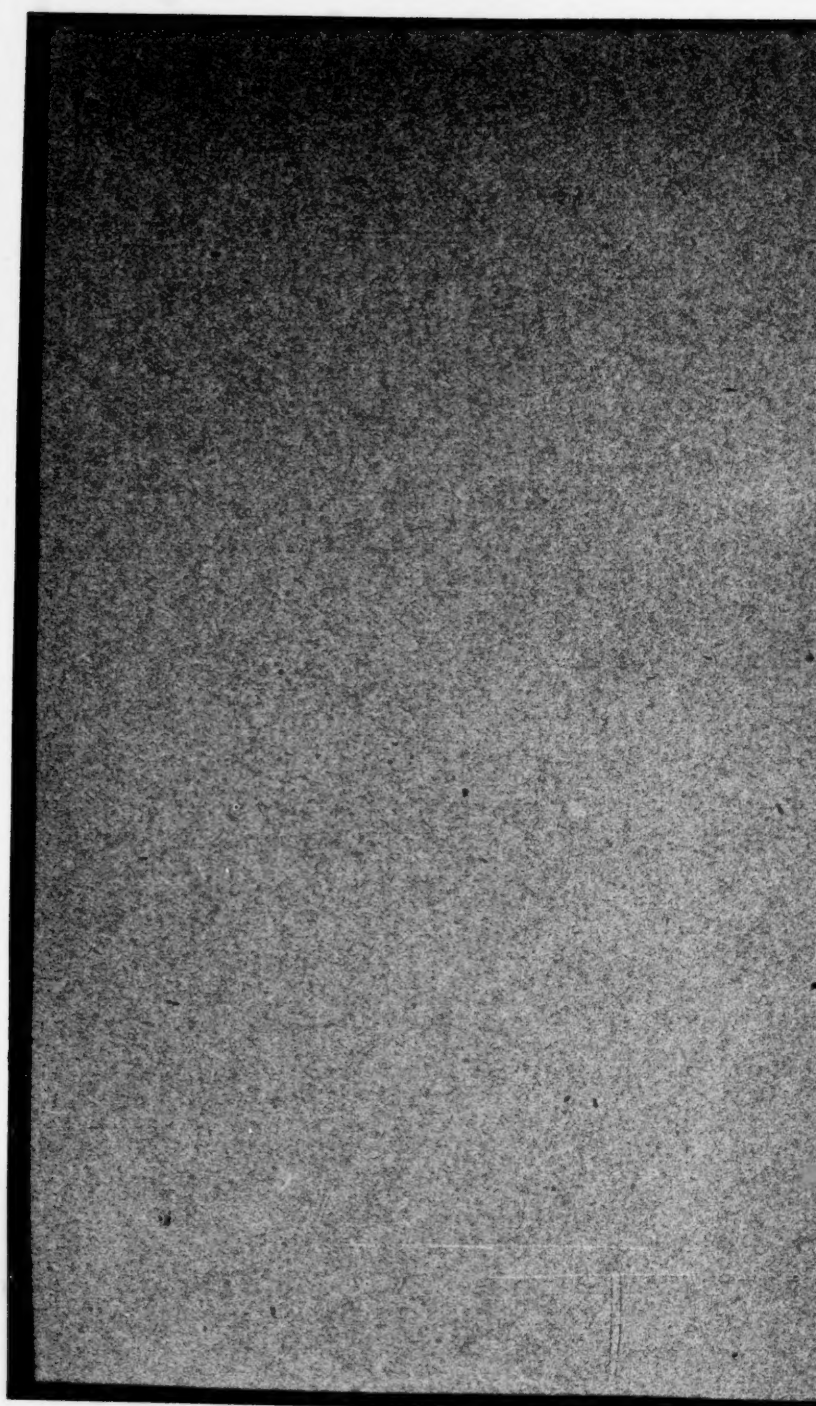
vs.

THE NORTHERN TRUST COMPANY AND OVID E. JAMES
SON, TRUSTEES.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR CERTIORARI FILED NOVEMBER 25, 1908.
CERTIORARI AND RETURN FILED JANUARY 4, 1909.

(16,724.)



(16,724.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

No. 196.

HARRY W. DICKERMAN, TRUSTEE OF THE SECOND
NATIONAL BANK OF ROCKFORD, ILLINOIS, ET AL.,
PETITIONERS,

vs.

THE NORTHERN TRUST COMPANY AND OVID B. JAME-
SON, TRUSTEES.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT.

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a *Transcript of Record.*

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1895.

HARRY W. DICKERMAN, Trustee, ET AL., Appellants,	} No. 344.
<i>vs.</i>	
THE NORTHERN TRUST COMPANY and OVID B. JAMESON, Trustees, etc., Appellees.	

Mr. Otto Gresham, Mr. Robert R. Welsh, Mr. John S. Cooper, counsel for appellants.

Mr. Charles A. Dupee, Mr. Noble B. Judah, Mr. Monroe L. Willard, Mr. Henry M. Wolf, counsel for appellees.

Transcript of record filed August 19, 1896.

Printed record filed Sep. 4, 1896.

OLIVER T. MORTON, *Clerk.*

b In the United States Circuit Court, Northern District of Illinois, Northern Division.

NORTHERN TRUST COMPANY and OVID B. Jameson, Trustees,	} In Chancery. Bill. 23614.
<i>vs.</i>	
COLUMBIA STRAW PAPER COMPANY ET AL.	

and

HARRY W. DICKERMAN, Trustee, ET AL.	} Cross-bill.
<i>vs.</i>	
NORTHERN TRUST COMPANY ET AL.	

Dupee, Judah, Willard & Wolf, solicitors for Northern Trust Company and Ovid B. Jameson.

Herrick, Allen & Boyesen, solicitors for Columbia Straw Paper Company.

Otto Gresham, solicitor for Harry W. Dickerman *et al.*

R. V. Botsford, solicitor, and John S. Cooper, of counsel for Charles A. Miller.

1 Pleas in the circuit court of the United States for the northern district of Illinois, northern division, in chancery, sitting at the United States court-room in the city of Chicago, in the said district and division, before the Hon. John W. Showalter, circuit judge of the United States for the seventh judicial circuit, on Monday, the twenty-seventh day of July, in the July term of said court, in the year of our Lord one thousand eight hundred and ninety-six, and of our Independence the one hundred and twenty-first year.

S. W. BURNHAM, *Clerk.*

THE NORTHERN TRUST COMPANY and OVID B. Jameson, Trustees,	}	In Chancery. 23614.
<i>vs.</i>		
THE COLUMBIA STRAW PAPER COMPANY, HENRY W. Dickerman, Trustee for the Second National Bank of Rockford, Illinois; Buckstaff Brothers Manufacturing Company; Henry S. Carroll, for Himself and the Clarksville Paper Company; F. F. Diem, Freeman Graham, Jr., Julius Graham; E. P. Hooker, Trustee for the Merchants' National Bank of Defiance, Ohio, and in His Own Behalf, and James C. Richardson.		

Be it remembered that on the twenty-fourth day of January, 1895, came the Northern Trust Company and Ovid B. Jameson, trustees, and filed in the clerk's office of said court their bill of complaint against Columbia Straw Paper Company, defendant, and it now appearing that said original bill has been mislaid or lost, it is stipulated that a printed copy of said bill may be used in making up this record, which said stipulation is in the words and figures following, to wit:

Stipulation.

2	UNITED STATES OF AMERICA,	}	
	<i>Northern District of Illinois.</i>		
	THE NORTHERN TRUST CO. ET AL.	}	In Chancery.
	<i>vs.</i> COLUMBIA STRAW PAPER CO.		

It appearing that the original bill of complaint in this cause has been mislaid or lost, it is hereby stipulated that a printed copy thereof may be substituted for said original.

August 12, 1896.

DUPEE, JUDAH, WILLARD & WOLF,
Sol'rs for Complainant.
OTTO GRESHAM,
Solicitor for Dickerman et al.

(Endorsed :) Filed August 12, 1896. S. W. Burnham, clerk.

3

Original Bill.

UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division, } ss :

In the Circuit Court of the United States for the Northern District
of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and OVID B. JAMES- }
son, as Trustees, Complainants, }
vs. } In Equity.
COLUMBIA STRAW PAPER COMPANY, Defendant. }

To the honorable the judges of the United States circuit court for
said district, northern division :

The Northern Trust Company, a corporation duly organized and
existing under and by virtue of the laws of the State of Illinois, and
being a citizen of the State of Illinois, and having its principal
office for the transaction of business in the city of Chicago, in the
northern division of the northern district of said State of Illinois,
and Ovid B. Jameson, a citizen of the State of Indiana, and an in-
habitant and resident of said State of Indiana, bring this their bill
of complaint, as trustees against Columbia Straw Paper Company,
a corporation organized and existing under and by virtue of the
laws of the State of New Jersey, and a citizen of said State of New
Jersey.

I. And thereupon, your orators complain and say that the de-
fendant, Columbia Straw Paper Company, heretofore, to wit: on or
about the twenty-first day of December, eighteen hundred and
ninety-two, in consideration of the sale and conveyance to it of
various real and leasehold properties, and of certain mills, plants
and factories for the manufacturing of straw wrapping paper and
other kinds of paper, and the businesses in operation upon said prop-
erties, and the various fixtures, machinery, chattels and other valu-
able property and assets, in pursuance of certain resolutions duly
adopted by the stockholders and board of directors of said Colum-
bia Straw Paper Company, and having the legal authority so to do,
duly executed and issued under its corporate seal attested by the
signatures of its president and secretary thereunto duly authorized,
and in the name of the said Columbia Straw Paper Company, one
thousand (1,000) bonds of the denomination of one thousand
4 dollars (\$1,000) each, in part payment for the said property,
by the terms of which bonds the said Columbia Straw Paper
Company agreed to pay to the bearer, or, when registered, the
registered owner of each thereof, the sum of one thousand dollars
(\$1,000) in gold coin of the United States of America, of the stand-
ard weight and fineness, upon certain terms and subject to certain
conditions as to payment mentioned and referred to in said bonds,
and further agreed that it would, whenever the principal moneys
secured by said several bonds should, in accordance with the terms

and subject to the conditions as to payment and otherwise therein mentioned and referred to, become payable, pay to the bearer or, when registered, to the registered owner of said several bonds the said sum of one thousand dollars (\$1,000) and in the meantime the said Columbia Straw Paper Company agreed to pay interest upon said bonds at the rate of six per cent. (6 %) per annum from the first day of December, 1892, in half-yearly payments on the first day of June and on the first day of December in each year, by paying to the bearer of every coupon thereto attached, at the place therein mentioned, to wit: the office of the said Columbia Straw Paper Company in the city of Chicago, the amount of interest therein specified, and also the interest specified on any further coupons which might be issued in respect to such bonds; that by the terms of such bonds it was further agreed by the defendant Columbia Straw Paper Company that it would on the first day of December, 1893, redeem one hundred (100) of its bonds by paying therefor the sum of one hundred and ten thousand dollars (\$110,000) with accrued interest thereon, and that it would, likewise, on the first day of December, 1894, redeem one hundred and five (105) of said bonds by paying therefor the sum of eleven hundred dollars (\$1,100) for each bond, in gold coin of the United States of America of standard weight and fineness, in addition to accrued interest thereon, and that it would redeem the remainder of said bonds upon the said terms at various times between the first day of December, 1895, and the first day of December, 1901, and that it would annually, from and after the first day of December, 1893, pay into the sinking fund, for the purpose of providing for the redemption of said bonds the sum of one hundred and ten thousand dollars (\$110,000), together with the interest on the bonds previously redeemed as aforesaid; that the said defendant Columbia Straw Paper Company further agreed by the terms of the said bonds that the principal moneys thereby secured should become due and payable, not only upon the said bonds becoming redeemable as therein specified, but also forthwith upon any of the following events, to wit:

5 If the said Columbia Straw Paper Company should make default for the period of three (3) calendar months in the payment of any interest thereby secured, and the bearer or registered owner thereof, as the case might be, before the interest so in arrears was paid, by notice in writing to the said complainants, should call in the principal moneys secured thereby, or, if a judgment or order should be made or an effective resolution passed for the winding up or dissolution of the said company; or, if upon the security created by the deed of trust hereinafter mentioned becoming enforceable and being enforced, the complainant, The Northern Trust Company, should in the exercise of any power thereby conferred declare that the principal of said bonds should become immediately due and payable.

II. Further complaining, your orators allege that each of the bonds so executed and issued by said defendant Columbia Straw Paper Company was, on or about the thirty-first day of December, 1892, duly certified by The Northern Trust Company, complainant

herein, as trustee, to be one of the issue of bonds referred to by the terms thereof and fully described in the mortgage or deed of trust dated December 31, 1892, executed by the defendant Columbia Straw Paper Company to the complainants herein as trustees and which is hereinafter referred to, and that the holder of each of the said bonds was entitled to the benefit of the trust created by said mortgage or deed of trust; that all of said one thousand bonds were duly issued, negotiated and sold and are now outstanding and valid obligations of the defendant Columbia Straw Paper Company, and the same, with the coupons annexed thereto, have come into the possession of and are now held by a large number of persons who have become the owners thereof in good faith and for a valuable consideration, the names of many of said owners being unknown to your orators; that all of said bonds were in the form, or in substantially the form, and of the tenor recited and set forth in the mortgage or deed — trust hereinafter described, to which reference is hereby made, and a copy whereof is hereto annexed and made a part hereof and marked "Exhibit A." Said deed of trust was, shortly after the execution thereof, duly recorded in the office of the recorder of each county in which any of the premises described in said deed of trust are situated.

III. Further complaining, your orators allege that for the purpose of securing the payment of the said one thousand bonds and the interest thereon, the defendant Columbia Straw Paper Company, on or about the thirty-first day of December, 1892, under and pursuant to resolutions duly adopted by the stockholders and board of directors, and in the exercise of the power and authority by it in that behalf possessed, executed, under its corporate seal duly attested by its president and secretary thereunto duly authorized, a mortgage or deed of trust, which was likewise duly executed by the complainants herein as trustees, and was thereupon duly delivered to said complainants by the defendant Columbia Straw Paper Company, whereby the said defendant Columbia Straw Paper Company, granted, bargained, sold, assigned, transferred and conveyed unto the complainants herein and *their successors in the trust thereby created all of the freehold and leasehold properties hereinafter described*, together with all rights, privileges and appurtenances belonging to or in anywise appertaining to the said lands or the business conducted by said Columbia Straw Paper Company, and all houses, buildings and structures situated on said freehold property or connected therewith, or with the said business belonging to said Columbia Straw Paper Company, and all the plant, tools, materials, equipment, machinery, chattels and rights of every name, nature and description whatsoever, whether fixed or movable, together with all the corporate rights, privileges, immunities or franchises then owned or used by said defendant, Columbia Straw Paper Company, in and about its business, or which might be thereafter acquired by it, with the reversion and reversions, remainder and remainders, royalties, issues and profits thereof, and all the estate, right, title, rents and interest, property and possession, claim and demand whatsoever, as well in law as in equity, present

and future, of said Columbia Straw Paper Company, of, in and to all and singular said property and effects, and every part of the same, and every portion thereof, with the appurtenances, and all revenues, benefits, advantages and profits to said Columbia Straw Paper Company appertaining thereto, it being the intention of said Columbia Straw Paper Company to convey to said complainants as trustees all its real and leasehold property, and all its personal property, rights, privileges and chattels, of every nature and description whatsoever so far as the same could be legally subjected to the lien of a mortgage, and also all property of every nature and description whatsoever, which might, after the date of the execution of said mortgage or deed of trust, be acquired by said Columbia Straw Paper Company, either in addition to or in substitution for the property conveyed by said mortgage or deed of trust, which could be legally subjected to the lien of a mortgage; that said conveyance was made and executed by the said Columbia Straw Paper Company to the complainants herein in trust, to secure the payment of the aforesaid bonds, according to the terms thereof, and upon the conditions hereinafter specified.

7 IV. Further complaining, your orators allege that the freehold and leasehold properties conveyed by the said mortgage or deed of trust hereinbefore referred to, are fully set forth and described in the trust deed annexed hereto and made a part hereof and marked "Exhibit A."

A part of said property is situated in the northern district of the State of Illinois, and is described as follows:

The following-described real estate in Whiteside county, Illinois: Beginning at a point on the north line of River street, in the village (now city) of Rock Falls, one hundred and forty-three (143) feet easterly from the intersection of the said north line of River street with the west line of Grove street; thence easterly on said north line of River street four hundred and sixty (460) feet, more or less, to a point two and one half ($2\frac{1}{2}$) feet east of where the west line of lot three (3) in block four (4) in said Rock Falls, if continued across River street, would strike the south line of block "B;" thence northerly on a line at right angles with said south line of block "B" eighty (80) feet, to the north line of block "B;" thence westerly along said north line four hundred and sixty (460) feet more or less, to a point in a line running through the point of beginning at right angles with said north line of River street; thence southerly eighty (80) feet to the point of beginning; being a part of said block or lot "B" in Rock Falls, and part of the northeast fractional quarter of section twenty-eight (28), in township twenty-one (21) north, range seven (7) east of the fourth principal meridian.

Also all that part of the north embankment of the main race of Augustus P. Smith, lying between the east and west lines of the above-described tract of land if extended northerly across said race and embankment, except a small part thereof heretofore deeded by said Smith to Henry F. Batcheller by deed, dated August 15, 1872, and recorded in Book No. 64, page 28, among the records of said county.

Also a water power of twenty-four hundred (2,400) inches of water under a six (6) foot head, as the dam of the Sterling Hydraulic Company now exists, or its equivalent in power in case said hydraulic company or its assigns should raise said dam.

The above-described lands, premises and water power being subject and liable to like covenants, agreements, conditions, stipulations and reservations as are contained, by reference, in three certain deeds thereof to the Church Paper Company, dated respectively
 8 July 30, June 30, and November 28, 1891, and being recorded respectively, in Book 130, on page 108, Book 130 on page 109, and Book 127 on page 172, of the land records of said county, so far as the same are applicable to said lands, premises and water power hereby conveyed.

Also hydraulic lot number four (4) in Mill addition to the town of Lyndon.

Also a piece of land extending east and west one hundred (100) feet, and north and south twenty-six (26) feet, and situate on the south side of the race from the land last above described, and directly in front of and opposite thereto, the east and west line respectively, of both of said tracts, being on the same lines.

Also beginning at the northwest corner of hydraulic lot number three (3), in Mill addition to said Lyndon; thence southerly along the west line of said lot to a point on the prolongation easterly of the south line of the paper mill brick building as it now stands on hydraulic lot number four (4) in said Mill addition; thence easterly at right angles to the west line of said lot three (3) twenty-five (25) feet; thence northerly and parallel with said west line of lot three (3) to the north line of said lot three (3); thence westerly along said north line to the place of beginning.

Also the following-described real estate in Whiteside county, Illinois, to wit:

Commencing at a stake on the southwest fractional quarter (4) of section fifteen (15), in township twenty (20) north, range five (5) east of the fourth principal meridian, located on the east line of Mill street, in Mill addition to the town of Lyndon, in Whiteside county, as now platted, two (2) chains and eight (8) links south of the intersection of the south line of Commercial street with the east line of said Mill street; thence running south five (5) chains and fifty-two (52) links on the east line of said Mill street to a point in the center of Warner street, were the same extended east of said Mill street; thence east seven (7) chains and twenty-four (24) links; thence north five (5) chains and fifty-two (52) links; thence west seven (7) chains and twenty-four (24) links to place of beginning; containing four (4) acres, more or less. Also a water power equal to two thousand (2,000) inches of water under a six (6) foot head, said water power being created by the dam and works of the Lyndon Hydraulic and Manufacturing Company, at Lyndon, in said county, and being the same water power conveyed to the Church Paper Company by the Valley Paper Company, by deed dated June 30, 1891, recorded among the land records of said county, in Book 117
 9 of Records, on page 527.

Also the following-described real estate in Whiteside county, Illinois:

Lot eight (8) and part of lot nine (9) of Sterling Hydraulic lands in Whiteside county, Illinois, described as follows, to wit:

Commencing on the north wall of the Sterling Hydraulic Company's race, two hundred twenty-three and one-half ($223\frac{1}{2}$) feet westerly from the center of the west sill of said company's bulkhead, being fifty (50) feet west of the southwest corner of the tract of land conveyed to Thomas Hunt; thence northerly, parallel with the west line of said Thomas Hunt's to the south line of Wallace street, in Dement & Mason's addition to Sterling; thence westerly along the south line of Wallace street fifty (50) feet; thence southerly parallel with said first line to said company's north race wall; thence easterly along the north race wall fifty (50) feet to the place of beginning; being the same lot that is now platted and recorded as lot eight (8) of said hydraulic company's lands in the northeast fractional quarter ($\frac{1}{4}$) of section twenty-eight (28), township twenty-one (21) north, of range seven (7) east; north of Rock river.

Also a water power of one thousand (1,000) inches of water under a six (6) foot head.

Also a water right of way south of said race twenty (20) feet wide for tail-race and waste-water race to Rock river.

Also a strip twenty-five (25) feet wide, off the east side of hydraulic lot No. nine (9), being west of and adjoining said lot No. eight (8).

Also the following-described lots, pieces or parcels of land situated in the city of Elmwood, county of Peoria and State of Illinois, and known and described as follows, to wit:

Commencing at a point in the south line of Poplar street in said city of Elmwood in said county, four hundred and seventy and one-half ($470\frac{1}{2}$) feet east of the northeast corner of block "B B" in said town (now city) of Elmwood, as laid out by William J. Phelps, according to a plat filed in the office of the recorder of said Peoria county, in Book "N. A.," pages 16 and 17; running thence south eighty (80) feet; thence west one hundred and fifty (150) feet; thence south one hundred and sixty (160) feet; thence east two hundred and eighty-three (283) feet and two (2) inches; thence north
10 two hundred and forty (240) feet to the south line of Poplar street; thence west one hundred and thirty-three (133) feet and two (2) inches to the place of beginning; including all of lots twelve (12) and thirteen (13) in block "D D," and the south half ($\frac{1}{2}$) of lots one (1), two (2) and three (3), in block "C C," in said subdivision; also those parts of Rose and Sycamore streets now vacated in said subdivision as are included in the above description, all situated in the west half ($\frac{1}{2}$) of the southwest quarter ($\frac{1}{4}$) of section eight (8), township nine (9) north, range five (5) east of the fourth principal meridian, in said county of Peoria.

Also the following-described lots, pieces or parcels of land situated in the city of Pontiac, county of Livingston and State of Illinois, and known and described as follows, to wit:

Beginning at a point on the east line of the west half ($\frac{1}{2}$) of the

southwest quarter ($\frac{1}{4}$) of section twenty-two (22), township twenty-eight (28) north, range five (5) east of the third principal meridian, fifty (50) links south of the north line of Washington street, in the city of Pontiac; thence west with the course of said street ten (10) chains; thence south seven (7) chains to the center of the Vermillion river; thence up the river along its center to the Chicago and Alton Railroad lands; thence northeasterly along the line of said railroad lands to the intersection with the east line of said tract; thence north about seven (7) chains to the place of beginning—containing about seven (7) acres; also lots seven (7), eight (8), nine (9), ten (10), eleven (11) and twelve (12), in block twenty (20), and lot nine (9), in block twenty-one (21); all in Fell's addition to said Pontiac, county of Livingston and State of Illinois.

Also, the following-described real estate in La Salle county, Illinois, to wit:

A tract of land near the village of Dayton, in said La Salle county, in the northeast quarter (N. E. $\frac{1}{4}$) of section thirty-two (32), township thirty-four (34) north, range four (4) east of the third principal meridian, described as follows, to wit: Beginning at a point sixty (60) feet northwesterly from the northwest corner of the foundation of the old Stadden mill on the east bank of the feeder to the Illinois and Michigan canal, in the northwest fraction of the northeast quarter (N. E. $\frac{1}{4}$) of section thirty-two (32) aforesaid; thence southwesterly along the east bank of said feeder thirty (30) rods; thence east to Fox river; thence northeasterly along the west bank of said river thirty (30) rods; thence westerly to the place of beginning, containing two (2) acres, more or less; also one-sixteenth of the water which flows in Fox river, equal to forty-seven-horse power, more or less.

Also the following-described real estate in La Salle county, Illinois, to wit:

The west thirty (30) feet of lot twelve (12), all of lot thirteen (13), and the east twenty (20) feet of lot fourteen (14), in Water block, in the Marseilles Land and Water Power Company's addition to Marseilles, in La Salle county, Illinois, also described as "Commencing at a point on the south side of a thirty (30) foot street on the south side of the north head race, three hundred and sixty-five (365) feet westerly along said road, from the northeast corner of Rickcord and Company's flouring mill; thence westwardly along said road one hundred and fifty (150) feet; thence southerly to tail-race; thence easterly one hundred and fifty (150) feet on tail-race to the southwest corner of Augustus Adams & Sons' lot; thence northerly to the place of beginning;" and also all right, title, and interest in and to a certain water lease bearing date July 29, 1868, made and executed by the said Marseilles Land and Water Power Company to Jacob P. Black, said lease being for the term of ninety-nine (99) years from the date thereof.

Also the following-described real estate in La Salle county, Illinois, to wit:

All of lot seven (7) and the east forty (40) feet of lot six (6), in

Water block, in the Marseilles Land and Water Power Company's addition to Marseilles, in La Salle county, Illinois.

Also the following-described real estate in La Salle county, Illinois, to wit:

A tract of land containing three and seventy-eight one-hundredths (3.78) acres, described as follows, to wit: Commencing three hundred and seventy-six (376) feet south by thirty-four and one-half ($34\frac{1}{2}$) degrees east of the northwest corner of the southwest quarter (S. W. $\frac{1}{4}$) of the southeast quarter (S. E. $\frac{1}{4}$) of section twenty-six (26), township thirty-one (31) north, range three (3) east of the third principal meridian; thence north, fifty-seven and one-half ($57\frac{1}{2}$) degrees east, four hundred and twenty-four (424) feet; thence in a southeasterly direction, at right angles with the last line, three hundred (300) feet, to the land occupied by the Chicago, Alton & St. Louis Railroad Company as a right of way; thence south, fifty-seven and one-half ($57\frac{1}{2}$) degrees west on the line of the railroad land, five hundred and fifty (550) feet, to the center of the Vermillion river; thence in a northwesterly direction, at right angles to said last line, along the center of said river, three hundred (300) feet, thence north fifty-seven and one-half ($57\frac{1}{2}$) degrees east, one hundred and twenty-six (126) feet to beginning.

Also the following tract, to wit: To get starting point, commencing at the northwest corner of the southwest quarter (S. W. $\frac{1}{4}$) of the southeast quarter (S. E. $\frac{1}{4}$) of section twenty-six (26) aforesaid; thence run south, thirty-four and three-quarters ($34\frac{3}{4}$) degrees east, three hundred and seventy-six (376) feet; thence south thirty-two and one-half ($32\frac{1}{2}$) degrees east, three hundred and fifty (350) feet, to the center of the Chicago, Alton & St. Louis railroad; thence south, sixty-three and one-half ($63\frac{1}{2}$) degrees east, thirty (30) feet; then commencing at this point run south, sixty-three and one-half ($63\frac{1}{2}$) degrees east, one hundred and fifty-four (154) feet; thence north, seventy-six and three-quarters ($76\frac{3}{4}$) degrees east, two hundred and fifty (250) feet; thence south, eighty-one (81) degrees east, three hundred and twelve (312) feet; thence north, eight and one-half ($8\frac{1}{2}$) degrees west, four hundred and forty-seven (447) feet; thence south, sixty and one-quarter ($60\frac{1}{4}$) degrees west, three hundred and eighteen (318) feet; thence south, fifty-seven and one-half ($57\frac{1}{2}$) degrees west, four hundred thirty-two (432) feet, to said starting point, containing three and sixty-two one-hundredths (3.62) acres.

Also the following-described real estate in Winnebago county, Illinois, to wit:

A part of the north part of the south half ($\frac{1}{2}$) of the southwest quarter (S. W. $\frac{1}{4}$) of section twenty-six (26), township forty-four (44) north, range one (1) east, described as follows:

Commencing where the north line of said south half intersects the middle of Seminary street, formerly Prospect street; thence southwesterly along the center of said street four (4) chains and thirty-three (33) links; thence west thirteen (13) chains and fifty (50) links, more or less, to Rock river; thence upstream along said river, five (5) chains and thirty-four (34) links, more or less, to the north line of said south half; thence east eleven (11) chains and sixty (60)

links, more or less, to the place of beginning; also all right of the grantor herein to have Sayer street opened as mentioned in one or more of the deeds hereinafter referred to, excepting, however, the acre conveyed to Mary E. Colwell October 8, 1868, by deed recorded in Book 72 of Deeds, page 368, in the office of the recorder of Winnebago county, Illinois; also one and twenty-nine one-hundredths (1.29) acres conveyed on the same day to Susan F.

13 Colwell by deed recorded in the same book on page 369; also

excepting the land conveyed to the Chicago, Madison & Northern Railroad Company by deed recorded in the office of said recorder, in Book 127 of Deeds, page 115.

Also the following-described real estate situated in the city of Rockford, county of Winnebago and State of Illinois, to wit:

Lots five (5) and six (6) in the south block of the plat of Rockford Water Power Company's lots in said city, west of Rock river.

Also, the certain strip of land lying south of the south line of said lots five (5) and six (6); in the said south block of the Rockford Water Power Company's lots west of Rock river, which said strip is bounded as follows, to wit: On the north by the south line of said lots five (5) and six (6); on the east by a continuation southerly of the east line of said lot five (5) to a point one hundred and eighty-one (181) feet from the southerly line of Mill street; on the west by a continuation southerly of the west line of said lot six (6) to a point one hundred and sixty-nine and seven-tenths (169.7) feet from the southerly line of said Mill street, and on the south by a line connecting the south ends of the east and west lines above named.

Also a part of lot E, as shown in the recorded plat of the west part of the northwest quarter of section twenty-seven (27) and the southwest part of the southwest quarter (1) of section twenty-two (22), township forty-four (44) north, range one (1) east of the third principal meridian. Said part of said lot E being described as follows: Commencing at the northwest corner of said lot E, thence south on the west line thereof, four hundred and twelve and thirteen one-hundredths (412.13) feet; thence southeasterly five hundred and thirty-one and eight-tenths (531.8) feet (parallel with the northerly line of said lot E) to the east line of said lot E; thence north on said east line, four hundred and twelve and thirteen one-hundredths (412.13) feet to the northeast corner of said lot E; thence northwesterly on the northerly line of said lot E, five hundred and thirty-one and ninety-six one-hundredths (531.96) feet to the place of beginning, containing five (5) acres.

Also, twelve hundred twenty-thousandths ($\frac{12000}{200000}$) of all the water in Rock river, in accordance with and subject to the provisions of a certain deed from the Rockford Water Power Company to Levi Rhoades and Isaac Utter, dated June 26, 1866, and recorded in said Winnebago county on July 20, 1866, in Book 67 of Deeds, at page 426.

14 Also, four hundred twenty-thousandths ($\frac{4000}{200000}$) of all the water in Rock river, in accordance with and subject to the provisions of a certain deed from David L. Bartlett and wife and

John Bartlett to said Levi Rhoades and Isaac Utter, dated February 23, 1872, and recorded March 1, 1872, in said Winnebago county, in Book 81 of Deeds, at page 215.

Also the following-described real estate in Rock Island county, Illinois:

That part of lot nineteen (19) in the southwest fractional quarter ($\frac{1}{4}$) north of Rock river, in section fourteen (14) township seventeen (17) north, of range two (2), west of the fourth (4th) principal meridian, as follows: Bounded on the south and east by the north or main channel of Rock river, on the north and east by the right of way of the Rock Island and Peoria Railroad Company; on the north and west by the canal of the Rock River Navigation and Water Power Company; on the west by the east line of land owned by Bailey Davenport; also 2,100 inches of water to be measured and drawn from said canal as specified in a deed from the National Paper Company to James Frank Robinson conveying the said premises, dated June 5, 1884, and filed for record July 5, 1884.

Also, the following-described real estate in Kendall county, Illinois, to wit:

A part of lot three (3), of block five (5), in Black's addition to Yorkville, in Kendall county, Illinois, said part being described as follows, to wit: Commencing on the north line of Hydraulic avenue, sixty-six (66) feet east to the southwest corner of said lot three (3); thence east along the south line of said lot three (3) four hundred (400) feet; thence north at right angles with the south line of said lot three (3), to the south bank of Fox river; thence westerly along the south bank of said river to a point sixty-six (66) feet east of the northwest corner of said lot three (3); thence south, parallel to the west line of said lot.

Also the following-described lands in Kendall county, Illinois, to wit:

One undivided half ($\frac{1}{2}$) part of a part of the north fraction of the northwest fractional quarter of section thirty-three (33), in township thirty-seven (37) north, of range seven (7) east of the third principal meridian, described as follows, to wit: Commencing forty-four (44) links east and south, six (6) degrees west, four (4) chains and ninety (90) links, from the northeast corner of block twenty-two (22) in the town of Bristol, and four (4) chains north of high-water mark in Fox river, running thence east on a line parallel with said Fox river, thirty (30) rods; thence south six (6) degrees west, sixteen (16) rods to Fox river to the north bank thereof; thence west along the north bank of Fox river thirty (30) rods; thence north six (6) degrees east, sixteen (16) rods to the place of beginning; containing three (3) acres of land, more or less.

Also the following-described real estate, to wit: A part of lot three (3) in block five (5), Black's addition to the village of Yorkville, Kendall county, Illinois, and part of the northwest quarter (N. W. $\frac{1}{4}$) of section thirty-three (33), in township thirty-seven (37) north, of range seven (7), east of the third principal meridian, described by courses and distances as follows, to wit: Commencing at a point which is four hundred sixty-six (466) feet east from the

southwest corner of said lot three (3), and at the southeast corner of premises formerly owned and occupied by Charles J. Black and Lucius Clark, and on the north line of Hydraulic avenue, and running thence easterly along the north line of Hydraulic avenue, and north line of the Fox River Valley railroad, eleven (11) chains and eighty-five (85) links, to lands formerly owned by James McClellan; thence north, along the line of said land one (1) chain, more or less, to the south bank of Fox river; thence westerly, along the south bank of Fox river, to the northeast corner of said premises, formerly owned and occupied by said Black and Clark, to a point opposite the place of beginning; thence south, on the line of said premises, formerly owned and occupied by said Black and Clark, one (1) chain, more or less, to the place of beginning; containing one (1) and sixty-four one-hundredths ($\frac{64}{100}$) acres, more or less, and upon which said premises were situated the Fox River Company's paper mill buildings; also one undivided half part of the water power, including the undivided half part of the dam across Fox river, and known as the J. P. and E. A. Black water power on said Fox river, at Yorkville, Kendall county, Illinois.

Also all the following-described real estate, situated in the town of St. Charles, county of Kane and State of Illinois, to wit:

Part of the east fraction of the southwest quarter (S. W. $\frac{1}{4}$) of section twenty-seven (27), township forty (40) north, range eight (8) east of the third (3rd) principal meridian, described as follows, to wit:

16 Commencing at a point sixty (60) feet westerly of and in a line with the north line of Walnut street, from the southwest corner of block two (2), of the original town of St. Charles, aforesaid, on the east side of Fox river; thence northerly and parallel with the east line of First street, of said town, one hundred and ten (110) feet; thence westerly and parallel with the north line of Walnut street to Fox river; thence down said river to a point which would be in the north line of Walnut street were the same extended westerly to said river; thence easterly to the place of beginning; thence southerly parallel with the east line of First street, to intersect with Fox river; thence up said river to a point which would be in the north line of Walnut street were the same extended westerly to said river, thence easterly to the place of beginning.

Together with six hundred (600) square inches of water to be taken out of the race which runs through the above-described premises at that spot where the paper mill now stands.

Also all the following-described real estate, in North Joliet, in Will county, State of Illinois, to wit:

Lots three (3), four (4) and five (5), in block thirty-six (36), and lot one (1), in block thirty-seven (37), together with all interest in land between said lots five (5) and one (1)—(connected with a leasehold.—See "B").

All leasehold interest and estate, and all right, title and interest of any kind, which said company now has or may hereafter acquire,

in or to lots two (2) and three (3), in block thirty-seven (37) in North Joliet, in Will county, Illinois; together with all improvements thereon, and in or to any and all leases or agreements or renewals thereof, covering or relating to said lots or the improvements thereon, or any power connected therewith—(connected with a freehold. See "A").

V. Further complaining, your orators allege that by the terms of said mortgage or deed of trust, it was agreed that the said instrument should become enforceable whenever the complainants herein should declare the principal and interest owing upon the bonds, the payment of which was secured by the said mortgage or deed of trust, to be immediately payable, provided any of the said bonds should become due and payable according to the tenor thereof, and default should have been made in the payment of such bonds, or some one or more of them, for one calendar month thereafter, or provided default should have been made in the payment of the interest on the said bonds, or some one or more of them, or

17 some part of such interest, as the same should from time to time become due and payable according to the tenor of the said bonds, or in the performance of any other of the covenants or conditions in any of the said bonds, or in the said deed of trust contained, and such default should have continued for the period of three months after demand for such payment or performance had been made in writing by the complainant, The Northern Trust Company, or provided a judgment or order should be made, or an effective resolution of the defendant Columbia Straw Paper Company should be duly passed for the winding up of the said company, or if a distress, attachment, garnishment or execution should be respectively levied or sued out against any of the chattels or property of said Columbia Straw Paper Company, and said company should not upon such distress, attachment, garnishment or execution being levied or sued out, remove, discharge or pay said distress, attachment, garnishment, or execution.

VI. Further complaining, your orators allege that by the terms of said mortgage or deed of trust, the defendant, Columbia Straw Paper Company, expressly covenanted and agreed with your orators to redeem and discharge the whole of the said issue of bonds, to wit: one thousand (1,000) bonds, amounting in the aggregate to one million dollars (\$1,000,000), by paying for each of said bonds, in addition to all accrued interest thereon, eleven hundred dollars (\$1,100), in gold coin of the United States of America of the standard weight and fineness, as follows, to wit: one hundred of said bonds on the first day of December, 1893; one hundred and five of said bonds on the first day of December, 1894, and the remainder of said bonds at various times between the first day of December, 1895, and the first day of December, 1901; and that it would annually pay into the sinking fund created for the redemption of said bonds, the sum of one hundred and ten thousand dollars (\$110,000) together with the interest upon such of the aforesaid bonds as were redeemed according to the terms of said mortgage or deed of trust.

VII. Further complaining, your orators allege that on the first

day of December, 1893, the Columbia Straw Paper Company made default in redeeming or discharging the one hundred bonds which by the terms of said bonds and of said mortgage or deed of trust, were to be paid and redeemed on said day by paying therefor the sum of one hundred and ten thousand dollars (\$110,000) and accrued interest, or any part of said one hundred bonds; that on the first day of December, 1894, the defendant Columbia Straw Paper Company made default by failing to redeem or discharge the one

18 hundred and five bonds referred to in the said mortgage or deed of trust, as provided by the terms thereof, and by the provisions of said mortgage or deed of trust, or any part of said one hundred and five bonds; and the said defendant Columbia Straw Paper Company further made default on said first day of December, 1893, and on the said first day of December, 1894, respectively, by failing, on each of said dates, to pay into the sinking fund referred to in said mortgage or deed of trust, for the redemption of said bonds, the sum of one hundred and ten thousand dollars (\$110,000), on each of said dates, together with the interest upon said bonds as had been redeemed on the first day of December, 1893; that the said defendant, Columbia Straw Paper Company, on the first day of June, 1894, made default in the payment of the interest upon the portion of the said bonds which were then outstanding, to wit: on each and every one thereof; that thereafter, and on the first day of December, 1894, the said defendant, Columbia Straw Paper Company, likewise made default in the payment of the interest upon its said one thousand (1,000) bonds then outstanding, by failing to pay any of the interest which on that day became due and payable upon its said bonds; that each of the said defaults has ever since continued and still, continues, and that none of the payments required to be made by the defendant Columbia Straw Paper Company, as aforesaid, and in which it has defaulted, has been made by any other person or corporation, nor has any part thereof been paid, although payment thereof has been duly demanded.

VIII. Further complaining, your orators allege that on or about the twenty-second day of January, 1895, an execution was duly sued out against the chattels and property of said defendant, Columbia Straw Paper Company, upon a judgment obtained against said defendant by James Flanagan before George W. Underwood, justice of the peace, Cook county, Illinois, and the said defendant, Columbia Straw Paper Company, has failed to remove, discharge or pay such execution, although duly requested so to do.

IX. Further complaining, your orators allege that by reason of the premises, they have declared the principal and interest owing upon the said one thousand (1,000) bonds of the aggregate face value of one million dollars (\$1,000,000) to be immediately due and payable; that they have been requested in writing by the owners and holders of more than one-third of said bonds, to enforce the provisions of said deed of trusts and the security created thereby, and to bring this suit; that the said Columbia Straw Paper Company has been for some time, and still is insolvent, and unable to

19 pay its just debts and liabilities in full; that the security afforded by said mortgage or deed of trust given to your orators in payment of the said bonds, and the interest thereon, is, in the present condition and situation of the premises and properties subject to said mortgage, inadequate to secure the payment of the said bonds, and the interest thereon, according to their tenor and effect, and will continue to diminish in value unless said mortgaged premises and properties can be placed in the possession of, or under the control of the said bondholders, or their representatives, or of a receiver to be appointed in this suit.

X. Further complaining, your orators allege that the defendant, Columbia Straw Paper Company, now is the owner of various plants, tools, equipment, material, machinery and chattles, including a large quantity of straw paper, manufactured and in process of manufacture, together with various materials and supplies adapted for and necessary to the manufacture of straw paper, all of which has been taken into the possession of your orators under and pursuant to the mortgage or deed of trust hereinbefore referred to; that a large portion of said property is perishable in its nature, and will greatly deteriorate in value unless the same is disposed of for the benefit of the bondholders, secured by said mortgage or deed of trust, and the value of the plant, machinery and equipment covered by said mortgage or deed of trust and of the freehold and leasehold properties hereinbefore described will also greatly deteriorate unless the said properties are kept in operation, and that by reason of the cessation of the operation of said properties, or as much thereof as can be profitably operated, the security afforded to the bondholders of Columbia Straw Paper Company by said mortgage or deed of trust will be greatly impaired.

XI. And your orators further allege that in and by said deed of trust, it was provided that in case the security afforded by said deed of trust should have become enforceable, the trustees might, in their discretion, and they should, upon the request in writing of the holders of one-third of such of the bonds (but in either case, without any further consent on the part of said Straw Paper Company), either personally or by their agent or agents, attorney or attorneys, enter into possession and enjoyment of, and collect and receive and enjoy the rents, income and profits of all and singular, the real and personal estate and other property of the company for the time being, subject to said security, and exclude the Columbia Straw Paper Company therefrom, and as to the real estate specified in said trust deed, and the personal property and assets then owned or thereafter acquired by said Columbia Straw Paper Company, or any other real or personal property subject to said trust deed,

20 might exercise any or all of the following powers: (1) Might use, manage and control the same by superintendents, managers, receivers, agents, servants and attorneys, as the trustees might select to conduct the business in connection with the said property; (2) might from time to time provide for insurance upon said trust estate; (3) might collect and receive all the earnings, incomes, rents, issues and profits of said real and personal property and every part

thereof, and that upon the filing of a bill in equity or other commencement of judicial proceedings to enforce the rights of the trustees, complainants herein, or of the bondholders under said deed of trust, the trustees, complainants herein, should be entitled, as an essential part of the rights and property conveyed by said deed of trust, without regard to the value of the property or the solvency of the company, to the immediate appointment of a receiver or receivers of the property and securities conveyed by said deed of trust, and of the earnings, rents, issues, income, interest and profits thereof, pending such proceedings, with such powers as the court making such appointment should confer.

XII. And, forasmuch as your orators can have no adequate relief except in this court, and to the end, therefore, that the defendant may, if it can, show why your orators should not have the relief hereby prayed, and may make a full disclosure and discovery of all the matters aforesaid according to the best and utmost of its knowledge, remembrance, information and belief, full, true, direct and perfect answer make to the matters hereinbefore stated and charged (but not under oath, an answer under oath being hereby expressly waived).

XIII. Your orators pray :

First. That the said mortgage or deed of trust so as aforesaid executed and delivered to your orators by the defendant, Columbia Straw Paper Company, may be foreclosed, and that said mortgage or deed of trust may be decreed to be a first and paramount lien on the premises and property thereby granted and conveyed.

Second. That said defendant, Columbia Straw Paper Company, be decreed to pay the amount due upon the bonds secured by said mortgage or deed of trust, together with all costs, expenses, and equitable charges in that behalf incurred and expended, and that in default thereof, the defendant, and all persons claiming or to claim under it, and each and every of them, may be forever barred and foreclosed of and from all and every right and equity of redemption and claim of, in and to the said mortgaged premises and property and every part and parcel thereof, including all property
21 acquired by the defendant, Columbia Straw Paper Company, since the execution of said mortgage or deed of trust.

Third. That all and singular said mortgaged property and premises, with the appurtenances, effects, incidents, additions and incomes thereof, and all the rights, immunities, privileges and franchises mentioned in the said mortgage may be sold under a final judgment or decree of this honorable court, as provided by the terms of said mortgage or deed of trust.

Fourth. That the said decree may provide that at such sale your orators may, if so advised, bid for and purchase, or cause to be bid for and purchased, the property so sold on behalf of the holders of said bonds, in such manner as the court may deem proper, or as may be authorized by law.

Fifth. That an accounting may be had wherein and whereby it

shall be ascertained and determined as to the amount due upon said bonds, and what allowance should equitably be made to your orators as trustees, and that out of the moneys arising from the sale of the said property under the said decree, after the payment of the costs and expenses of this action and expenses of the sale, and any allowance which may be made to your orators and to their attorneys and counsel, and any prior liens or incumbrances on the said mortgaged premises, or any part thereof, the amount of the balance may be applied to the satisfaction of the entire sum secured by the mortgage, and paid over to your orators as trustees, or to the holders of said bonds and coupons.

Sixth. That the defendant, Columbia Straw Paper Company, may be adjudged to be liable and may be required to pay to your orators the amount of any deficiency which may remain after the application of such balance in the manner aforesaid.

Seventh. That an account may be taken of the bonds and coupons secured by said mortgage or deed of trust, and the amount due on said bonds and coupons for principal and interest, and that the names of the lawful owners thereof may be ascertained.

Eighth. That a receiver may be appointed by this honorable court, according to the course and practice of this court, with the usual powers of receivers in like cases, of all the mortgaged property and premises and franchises, and the rents, issues, incomes and profits thereof, and that the said receiver may be authorized to operate, during the pendency of this action, such of the property described in said mortgage or deed of trust as may be operated to the advantage of the bondholders secured by said deed of trust, and to sell and dispose of such of the personal property which may come into the hands of such receiver, and the product which may result from the operation of any of said properties for the benefit of said bondholders.

Ninth. And your orators further pray that a provisional or preliminary injunction be issued restraining the defendant, Columbia Straw Paper Company, and its officers, directors and agents, and the several creditors of said Columbia Straw Paper Company, and each of them, from interfering with, transferring, selling or disposing of any of the said mortgaged property or premises, and from taking possession of, seizing, attaching, or attempting to sell, seize, attach or take possession of, either by judicial process or otherwise, the said property or premises, or any part thereof, and that your orators be authorized to apply to any other United States circuit court of competent jurisdiction for proceedings in aid of the primary jurisdiction of this court, and that your orators may have such other and further relief as the case may require and to your honors shall seem meet.

And may it please your honors to grant unto your orators not only a writ of injunction conformable to the prayer of this bill, but also a writ of subpœna of the United States of America directed to the defendant, Columbia Straw Paper Company, commanding it on a day certain to appear and answer to this bill of complaint, and to abide by and perform such order and decree as to the court shall

seem proper and required by the principles of equity and good conscience.

(Signed)

THE NORTHERN TRUST COM-
PANY AND
OVID B. JAMESON, *Trustees,*
By DUPEE, JUDAH & WILLARD,
Their Attorneys.

(Signed) DUPEE, JUDAH & WILLARD,
Complainant's Solicitors and of Counsel.

23 STATE OF ILLINOIS, } ss:
Cook County, }

Arthur Heurtley, being first duly sworn, on oath says that he is the secretary of the above-named complainant, The Northern Trust Company, and its duly authorized agent in this behalf, and familiar with its business and with the facts stated in the foregoing bill of complaint; that he has read the said bill of complaint and knows the contents thereof, and that the same are true.

(Signed)

ARTHUR HEURTLEY.

Subscribed and sworn to before me this 24th day of January, 1895.

(Signed)

EUGENE H. DUPEE,
Notary Public.

[NOTARIAL SEAL.]

EXHIBIT A.

An indenture made this thirty-first day of December, in the year one thousand eight hundred and ninety-two, between the Columbia Straw Paper Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey (hereinafter called the company), party of the first part, and the Northern Trust Company, a corporation existing under and by virtue of the laws of the State of Illinois (hereinafter called the Illinois trustee) and Ovid B. Jameson, a resident of the city of Indianapolis, Marion county and the State of Indiana, as trustees (hereinafter called the trustees), parties of the second part:

Whereas, the company was duly organized under the laws of the State of New Jersey for the purpose, among other things, of manufacturing, buying, selling, exchanging and dealing in straw wrapping paper, rag wrapping paper, express paper, manilla wrapping paper, straw and wood-pulp boards, binder boards, building paper, roofing felts and papers, carpet felts and linings, straw-board lumber, wood pulp, straw pulp, and each and every grade and character of paper that now is or may hereafter become the subject of manufacture, or any commodity of like character now known or that may hereafter become known; of purchasing on lease or in exchange, hiring or otherwise acquiring any real or personal property, rights or privileges suitable or convenient for any purposes of

its business; of damming rivers and streams, including
24 storage, transportation and sale of water and water power
and privileges, with the right to take rivulets, raceways and
lands and erect and maintain dams and raceways, and to lease,
mortgage, sell and convey the same or any part thereof; of borrow-
ing or raising money for any purpose of the company, and to secure
the same and interest, or, for any other purpose, to mortgage or
charge the undertaking, or all or any part of the property present
or after acquired of the company; and of creating, issuing, making,
drawing, accepting and negotiating bonds and other obligations
and instruments; and

Whereas, at a meeting of the stockholders of the company, held
at its principal office in the city of Hoboken, county of Hudson
and State of New Jersey, on the 14th day of December, 1892, the
following preamble and resolutions were unanimously adopted:

"Whereas, One Emanuel Stein, of the city of Chicago, county of
Cook and State of Illinois, represents himself to be the holder of
options upon certain mills, plants and factories for the manufacture
of straw wrapping paper and other kinds of paper, and upon the
businesses in which such straw wrapping paper and other kinds of
paper are manufactured, full schedules of which have been sub-
mitted with the written proposition made to this company by the
said Emanuel Stein and filed with the secretary; and

Whereas, the said Emanuel Stein represents himself to be en-
titled, under the terms of said options held by him, to acquire the
absolute title to all such mills, plants and factories, and to the
several businesses named in such options, upon the terms therein
prescribed, upon making the payments provided thereby; and

Whereas, the said Emanuel Stein has presented to this company
a proposition in writing for the sale of the said properties upon his
acquisition thereof, together with the said businesses and the good
will thereof, upon the terms specified in said written proposition;

Now, therefore, be it resolved, That this company purchase from the
said Emanuel Stein all the properties, mills, plants and factories
and appurtenances (of which schedules are embodied in the written
proposition submitted by him to this company and filed with the
secretary), and the respective businesses conducted upon said prop-
erties, and the good will thereof, and all the rights and interests in
said property and in said businesses which he is entitled to acquire
under the aforesaid options, as in his proposition set forth, upon
condition that he shall secure a good and indefeasible title

25 to all such properties, mills, plants, factories, appurtenances,
businesses and good will, and shall pay the entire purchase
price necessary to secure the same, and upon the further condition
that the said Emanuel Stein shall enter into a contract with this
company, in regard to the said purchase, satisfactory in form and
contents to the board of directors, or such officer or officers as they
may delegate.

Resolved, further, That, in payment for said properties, mills, plants,
factories, appurtenances, business and good will, this company pay

to the said Emanuel Stein, or his nominees, the sum of five million dollars (\$5,000,000), as follows:

(a.) One thousand eight hundred dollars (\$1,800) in cash.

(b.) One million dollars (\$1,000,000) thereof by the issuance and delivery to the said Emanuel Stein or his nominees of one thousand (1,000) six (6) per cent. first-mortgage gold bonds of the company, of the denomination of one thousand dollars (\$1,000) each, being all of a total authorized issue of one million dollars of such bonds secured by a mortgage as a first lien or charge upon all the rights, properties and interests acquired by the company from the said Emanuel Stein, and upon all after-acquired property of the company, and upon its franchises and undertaking, so far as such rights and interests are capable of being legally subjected to the lien of the mortgage. The bonds secured by said mortgage shall be redeemable in gold coin of the United States of America, of the standard weight and fineness, at a premium of ten per cent. by annual drawings by means of an annual cumulative sinking fund of one hundred and ten thousand (\$110,000) dollars, besides which, the interest on the bonds as redeemed shall be set aside, as though the said bonds were still outstanding, and the amounts thereof shall be added to and form part of the sinking fund for the redemption of such bonds.

The trustees for the bondholders shall be designated by the counsel for the company, and in the event of the said Emanuel Stein being unable to convey the properties free from incumbrances, an amount of bonds equal at par to the incumbrances thus remaining on the properties shall be placed in the hands of one or more of the trustees for the bondholders, together with an amount of the preferred stock of the company equal at par to twenty per cent. of the bonds so set apart, and an amount of common stock equal at par to forty per cent. of the bonds so set apart, with directions to such trustee or trustees to dispose of said bonds and stock at public or private sale at the earliest possible date, but, in any event, within one year

from the date of issuance of said bonds for an amount of
26 money not less than the incumbrances taken over by the company, to the end that the property shall, as soon as practicable, be held by the company free and clear of all liens, claims and incumbrances, and that the mortgage given to secure said bonds shall be a first lien or charge upon all the rights, properties and interests acquired by the company.

(c.) The further sum of one million dollars (\$1,000,000) of such purchase-money shall be paid by the due issuance and delivery by the company to the said Emanuel Stein, or his nominees, of the entire authorized issue of preferred stock of the company, to wit, certificates representing ten thousand shares of such stock of the total par value of one million dollars, all of which shall be full-paid and unassessable, and shall be so expressed on the face of the certificate.

The preferred stock so to be issued shall be cumulative and shall be entitled to cumulative annual dividends at the rate of eight (8) per cent. per annum, payable quarter yearly, before any dividend

can or shall be declared or paid on the common or general stock ; but the said preferred stock may, at the option of the company, be redeemed at par, at any time after January 1, 1903.

(d.) The balance of the purchase price of five million dollars (\$5,000,000) shall be paid by the due issuance and delivery to the said Emanuel Stein or his nominees of twenty-nine thousand nine hundred and eighty-two shares of common or general stock of the total par value of two million nine hundred and ninety-eight thousand two hundred dollars (\$2,998,200), all of which shall be full-paid and unassessable and so expressed on the face of the certificates.

Resolved, further, That the directors of this company, or such officer or officers as they may delegate, be, and they hereby are, empowered, authorized and directed to carry these resolutions into effect, and to execute, accept and deliver all such contracts or other instruments containing such covenants, conditions and provisions, and imposing such restrictions and obligations, and to take all such other steps as shall appear to them necessary or proper for that purpose."

And, whereas, at a meeting of the board of directors of the company, held at No. 46 Wall street, in the city, county and State of New York, on the fourteenth day of December, 1892, the following resolutions were unanimously adopted :

27 *Resolved,* That in accordance with resolutions passed at a meeting of the stockholders held this day, this company purchase from the said Emanuel Stein all the properties, mills, plants and factories and appurtenances of which schedules are given in the written proposition submitted by him to this company and filed with the secretary, and the respective business conducted upon the said properties, and the good will thereof, and all the rights and interests in said property and in said businesses which he is entitled to acquire under the aforesaid options, as in his proposition set forth, upon condition that he shall secure a good and indefeasible title to all such properties, mills, plants, factories, appurtenances, businesses and good will, and shall pay the entire purchase price necessary to secure the same, and upon the further condition that the said Emanuel Stein shall enter into a contract with this company satisfactory in form and contents to the board of directors, or such officer or officers as they may delegate.

Resolved, further, That in payment for said properties, mills, plants, factories, appurtenances, businesses and good will, this company pay to the said Emanuel Stein, or his nominee, the sum of five million dollars (\$5,000,000), as follows :

(a.) One thousand eight hundred dollars (\$1,800) in cash.

(b.) One million dollars (\$1,000,000) thereof by the issuance and delivery to the said Emanuel Stein, or his nominees, of one thousand (1,000) six (6) per cent. first-mortgage gold bonds of the company, of the denomination of one thousand dollars (\$1,000) each, being all of a total authorized issue of one million dollars of such bonds secured by a first mortgage as a lien or charge upon all the rights, properties, and interests acquired by the company from the

said Emanuel Stein, and upon all after-acquired property of the company, and upon its franchises and undertaking, so far as such rights and interests are capable of being legally subjected to the lien of the mortgage. The bonds secured by said mortgage shall be redeemable in gold coin of the United States of America, of the standard weight and fineness, at a premium of ten per cent. by annual drawings, by means of an annual cumulative sinking fund of one hundred and ten thousand dollars (\$110,000), besides which, the interest on the bonds as redeemed shall be set aside as though the said bonds were still outstanding, and the amounts thereof shall be added to and form part of the sinking fund for the redemption of said bonds.

28 The trustees for the bondholders shall be designated by the counsel for the company, and in the event of the said Emanuel Stein being unable to convey the properties free from incumbrances, an amount of bonds equal at par to the incumbrances thus remaining on the properties shall be placed in the hands of one or more of the trustees for the bondholders, together with an amount of the preferred stock of the company equal at par to 20 per cent. of the bonds so set apart, and an amount of common stock equal at par to 40 per cent. of the bonds so set apart, with directions to such trustee or trustees to dispose of said bonds and stock at public or private sale at the earliest possible date; but, in any event, within one year from the date of issuance of said bonds for an amount of money not less than the incumbrances taken over by the company, to the end that the property shall, as soon as practicable, be held by the company free and clear of all liens, claims and incumbrances, and that the mortgage given to secure said bonds shall be a first lien or charge upon all the rights, properties and interests acquired by the company.

(c.) The further sum of one million dollars (\$1,000,000) of such purchase-money shall be paid by the due issuance and delivery by the company to the said Emanuel Stein, or his nominees, of the entire authorized issue of preferred stock of the company, to wit, certificates representing ten thousand shares of such stock of the total par value of one million dollars, all of which shall be full-paid and unassessable, and shall be so expressed on the face of the certificate.

The preferred stock to be so issued shall be cumulative, and shall be entitled to cumulative annual dividends at the rate of eight (8) per cent. per annum, payable quarter yearly, before any dividend can or shall be declared or paid on the common or general stock; but the said preferred stock may, at the option of the company, be redeemed at par at any time after January 1st, 1903.

(d.) The balance of the purchase price of five million dollars (\$5,000,000) shall be paid by the due issuance and delivery to the said Emanuel Stein, or his nominees, of twenty-nine thousand, nine hundred and eighty-two shares of common or general stock, of the par value of two million, nine hundred ninety-eight thousand and two hundred dollars (\$2,998,200) all of which shall be full-paid and unassessable, and shall be so expressed on the face of the certificates.

Resolved, further, That the president of this company be, and he hereby is, authorized, empowered and directed to carry these resolutions into effect, and to execute, deliver and accept any and
29 all instruments which may, in his judgment, be necessary or proper to consummate the purchase authorized hereby in such form, with such covenants and restrictions and imposing such obligations on the company as he may deem advisable or necessary to effect the purpose of these resolutions; and upon the receipt and acceptance by him of the instruments vesting the title in the company to the property, assets, effects, rights, privileges and good will hereby authorized to be purchased, to join with the treasurer in the issuance to the said Emanuel Stein, or his nominees, of the certificates of the common and preferred stock of this company above described, and to execute and deliver to the said Emanuel Stein, or his nominees, the aforesaid first-mortgage gold bonds, all of which shall be done in such manner and subject to such conditions, terms and provisions as are contained in these resolutions, or which shall be made and provided for in the contract to be made with the said Emanuel Stein as one of the conditions upon which the purchase aforesaid shall be made.

Resolved, further, That the president of this company be, and he hereby is, authorized, empowered and directed to sign the name of the company to all instruments that may be deemed by him proper or necessary to effect the purposes of these resolutions, and to affix the corporate seal thereto.

And, whereas, the said Emanuel Stein and the company duly entered into a contract in accordance with the terms of said resolutions.

And, whereas, the said Emanuel Stein and Julia Stein, his wife, in pursuance of the said resolutions and in performance of the contract made thereunder, have conveyed unto the company the real and leasehold properties hereinafter described, and all the businesses in operation on said properties, including the good will and all the trade-marks and trade names thereof, and all the fixtures, machinery, chattels, assets and effects of every kind and description situated on said properties or included in the options aforesaid, or to which he may obtain title under such options, of which freehold property a schedule is hereto attached, marked "A," and is hereby embodied in this instrument and made a part thereof, and of which leasehold property a schedule is hereto attached, marked "B," and is hereby embodied in this instrument and made a part thereof; and,

Whereas, the company, in pursuance of the resolutions and the contract aforesaid, and such other legal authority as it has therefor, is about to execute and issue the said one thousand bonds of the
30 denomination of one thousand (\$1,000) dollars each, in part payment for the said property, all of which bonds are equally secured by the indenture, and all of which bonds are to be authenticated by a certificate signed by the Illinois trustee, and each and all of which are to be substantially in the following form:

No. —.

\$1,000.

UNITED STATES OF AMERICA, *State of New Jersey.*

Columbia Straw and Paper Company Six Per Cent. First-mortgage Gold Bond, Due on or before December 1, 1891; Redeemable at 110 by Annual Drawings.

The Columbia Straw Paper Company (hereinafter called the company,) acknowledges itself indebted to the bearer, or, when registered, to the registered owner hereof, in the sum of one thousand dollars in gold coin of the United States of America, of the standard weight and fineness, upon the terms and subject to the conditions as to payment and otherwise hereinafter mentioned and referred to, and will, if and when the principal moneys hereby secured shall, in accordance with the terms and subject to the conditions as to payment and otherwise hereinafter mentioned or referred to become payable, pay to the bearer or, when registered, to the registered holder, of this bond for the time being the said sum of one thousand dollars.

The company will in the meantime pay interest on this bond at the rate of six per cent. per annum, beginning from the 1st day of December, 1892, by half-yearly payments on the 1st day of June and the 1st day of December in each year, by paying to the bearer of every coupon hereto attached, at the time and place therein mentioned, the amount of interest therein specified, and also the interest specified on any further coupons which may be issued in respect of this bond.

This bond is issued upon and subject to the conditions as to redemption and all other conditions endorsed hereon, which shall be and be read as part of this bond, and which the company covenants to observe and perform in every respect.

Given under the corporate seal of the company this thirty-first day of December, in the year one thousand eight hundred and ninety-t—.

— —, *President.*

Attest:

— —, *Secretary.*

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The Conditions within Referred to.

1. This bond is one of a series of one thousand bonds of like amount, date and tenor, numbered consecutively from one to one thousand, both inclusive, each for \$1,000 issued or about to be issued by the company for an aggregate amount of \$1,000,000.

2. Annexed to this bond are eighteen coupons, each providing for the payment of a half year's interest, and such interest will be payable only on presentation and delivery of the coupon referring thereto, or of such further coupons as may be issued with respect to this bond.

3. The bonds of this series are equally secured by a mortgage as a first lien or charge upon the property of the company and without

any preference or priority one over another, and the company shall not be at liberty to create any mortgage or charge of or upon any part of the property of the company ranking *pari passu* with, or in priority to, the charge thereby created.

4. The principal moneys hereby secured shall become due and payable, not only upon this bond being drawn for redemption and becoming redeemable as hereinafter mentioned, but also forthwith upon the happening of any of the following events, that is to say:

(a.) If the company makes default for a period of three calendar months in the payment of any interest hereby secured, and the bearer or registered holder thereof, as the case may be, before the interest so in arrear is paid, by notice in writing to the company, calls in the principal moneys hereby secured.

(b.) If a judgment or order shall be made, or an effective resolution passed, for the winding up or dissolution of the company.

(c.) If, upon the security created by the deed of trust herein mentioned becoming enforceable and being enforced, the Illinois trustee of such deed shall, in the exercise of any power thereby conferred, declare that the principle of the said bonds shall become immediately due and payable.

5. This bond is subject to redemption during the month of December in any year at a premium of ten per cent., with accrued interest, from a sinking fund payable annually, for which provision is made in the mortgage given to secure this issue of bonds, and amounting in each year until December 1, 1901, to one hundred and ten thousand (\$110,000) dollars, together with the interest on the bonds previously redeemed.

32 The company will, on the first day of December, 1893, and the first day of December in every succeeding year, redeem the respective amounts of the said bonds shown on the table following, that is to say:

Year.	Number of bonds to be redeemed.	Year.	Number of bonds to be redeemed.
1893.....	100	1898.....	130
1894.....	105	1899.....	138
1895.....	111	1900.....	145
1896.....	117	1901.....	30
1897.....	124		

The particular bonds to be redeemed on each occasion are to be ascertained by drawings to be made under the direction of the Northern Trust Company, a corporation organized under the laws of the State of Illinois or its successor in the trust hereinafter mentioned in the month of November of each year in the city of Chicago at a time and place of which at least one week's previous notice shall be given by advertisement in two daily newspapers, one published

in the city of New York, and the other published in the city of Chicago, in the State of Illinois. Immediately after every drawing the company will cause the numbers of the bonds drawn for redemption to be published at least once a week for two consecutive weeks in one daily newspaper published in the city of New York, and one such newspaper published in the city of Chicago, and shall also, in the case of any bond drawn for redemption which shall for the time being be registered, cause a notice thereof to be sent by post to the registered holder.

Every bond so drawn for redemption shall become redeemable and be redeemed by the company, on the first day of December next succeeding such drawing, at the price of each bond (in addition to all accrued interest) of \$1,100 in gold coin of the United States of the standard weight and fineness. Every such bond shall, thereupon, from said first day of December, cease to carry interest unless, the same shall not be redeemed through some default on the part of the company, but the interest on all redeemed bonds shall each year be added to the annual cumulative sinking fund of \$110,000. The registered or other holder of this bond (as the case may be) shall, on the redemption thereof, deliver the same to the company, together with all subsequent coupons, and shall sign such receipt (if any) as shall reasonably be required by the company.

33 6. Except when registered, this bond is transferable by delivery, but the company will, at any time, upon the request of the bearer of this bond, while the same is unregistered, register him or his nominee in the register hereinafter mentioned as the holder of this bond, and endorse a note of such registration hereon. And the company will also, at any time, upon the request in writing of the registered holder, or of any person showing title under him, by transmission of interest or by operation of law, cancel the registration of this bond, and the note thereof endorsed thereon, and thereupon this bond shall again become transferable by delivery. A fee of fifty cents shall be paid upon every such registration or cancellation.

7. A register of the bonds will be kept at the company's office in the city of Chicago, containing full particulars of every bond that has been issued by the company, and also showing, in the case of any bond that may for the time being be registered, the name, address and description of the registered holder thereof. And such register shall, at all reasonable times during business hours, be opened to the inspection of the registered holder thereof, his executors or administrators, or any person authorized in writing by him or them.

8. Every transfer of this bond when registered must be in writing under the hand of the registered holder or of some person showing title under him by the transmission of interest by operation of law. The instrument of transfer of any bond or bonds shall be left at or sent to the office of the company in the city of Chicago, with a fee of fifty cents.

9. The bearer of this bond while unregistered, or, while registered, the registered holder hereof, his executors or administrators, and

the bearer of each of the coupons annexed hereto, or to be issued as hereinbefore provided, shall be regarded as exclusively entitled to the benefit of this bond and of the said coupons respectively, free from any equities between the company and the original or any intermediate holder or bearer of such bond or coupon respectively; and the delivery to the company or to either trustee of this bond, if the same is unregistered, or, if the same is registered, the receipt of the registered holder, his executors or administrators, shall be a full discharge for the principal moneys hereby secured, and the delivery to the company or to either trustee of each of the said coupons shall be a good discharge for the interest therein specified, and neither the company nor the trustees shall be bound to inquire into the title of any bearer or registered holder, his executors or administrators, or to take notice of any trust affecting such principal moneys or interest, or to be affected by express notice of right, title or claim of any other person to such principal moneys or interest, or to the bond or such coupon respectively.

10. Subject to the conditions of the trust deed hereinafter mentioned, the holders of three-fourths in value of the outstanding bonds of this series may sanction any agreement with the company for any modification or alteration of the rights of the bondholders of this series as a class, including any release of any property charged thereby, and any postponement of the time for the payment of any moneys secured thereby, and any increase or reduction of the rate of interest and an agreement so sanctioned shall be binding on all the bondholders of this series, and notice of any action thus taken shall be given to each bondholder, and each bondholder shall be bound thereupon to produce his bond to the company, and to permit a note of such modification to be placed thereon.

11. Any notice may be served upon the bearer of this bond, while unregistered, by advertisement inserted twice within a week in at least one daily newspaper of general circulation published in each of the cities of New York and Chicago. And if and while this bond is registered any notice may be served upon the registered holder hereof by sending it through the post in a prepaid letter addressed to such person at his registered address, or by delivering it at such registered address. Any notice served by post shall be deemed to have been served at the expiration of forty-eight hours after it is posted, wherever mailed; and, in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post-office.

12. The holders of the bonds of the above issue which shall have been authenticated by the certificate of the Northern Trust Company, endorsed thereon are and will be entitled *pari passu* to the benefit of an indenture of trust and mortgage, dated the thirty-first day of December, 1892, made between the Columbia Straw Paper Company, a corporation created and existing under the laws of the State of New Jersey, of the first part, and the Northern Trust Company, a corporation organized under the laws of the State of Illinois, and Ovid B. Jameson, of the city of Indianapolis, of the second

part, whereby certain real and personal property, good will, franchise and undertaking therein mentioned were vested in the parties of the second part, as trustees, for further securing the payment of the principal moneys and interest payable in respect of the said bonds.

35

(Form of Interest Coupon.)

\$30.

Interest coupon No. —.

Columbia Straw Paper Company will pay to bearer thirty dollars, being six months interest due on the — day of — and payable at the office of the company in the city of Chicago on bond No. —.

— —, Secretary.

(Certificate of Trust Company.)

This bond is one of the issue of bonds within mentioned, and fully described in the mortgage or deed of trust, known as the first mortgage, dated the thirty-first day of December, 1892, executed by the Columbia Straw Paper Company to the undersigned and Ovid B. Jameson, as trustees, and the holder of this bond is entitled to the benefit of the trust thereby created.

— —, Trustee.

Now, therefore, this indenture witnesseth, that the company, in consideration of the premises, and for other good and valuable considerations and for the purpose of further securing the payment of the said one thousand bonds and the interest thereon, has granted, bargained, sold, assigned, transferred and conveyed, and does hereby grant, bargain, sell, assign, transfer and convey, unto the trustees and their successors in the trust hereby created, all the freehold property, wheresoever situated, full descriptions of which are contained in the schedule hereunto annexed, marked "A," which is hereby embodied in and made a part of this instrument, and all the leasehold property, a full description of which is contained in the schedule hereunto annexed, marked "B," which is hereby embodied in and made a part of this instrument;

Together with all the rights, privileges and appurtenances belonging or in anywise appertaining to the said lands and leases, or to the business conducted by the company, and all houses, buildings and structures situated on the freehold property aforesaid or connected therewith or with the said business belonging to the company, and all the plant, tools, equipment, material, machinery and chattels of every name, nature and description whatsoever, whether fixed or movable, together with all corporate rights, privileges immunities or franchises now owned or used by the company in and about its said business, or which may be hereafter acquired, with the reversion and reversions, remainder and remainders, royalties, issues and profits thereof, and all the estate,

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right, title, rents and interest, property and possession, claim and demand whatsoever, as well as in law as in equity, present and future of the company, of in and to all and singular the property and effects hereinbefore and in said schedules described, and every part of the same and every parcel thereof, with the appurtenances and all revenues, benefits, advantages and profits to the company appertaining thereto; it being the intention of the company to convey hereby, to the trustees, all its real and leasehold property, and all its personal property, chattels, rights and privileges of every nature and description whatsoever, so far as the same can be legally subjected to the lien of a mortgage, and also all property of every nature and description whatsoever which may hereafter be acquired by the company, either in addition to or in substitution for the property conveyed by this indenture, which may legally be subjected to the lien of a mortgage.

To have and to hold the said property, whether real or personal, premises, things, rights, privileges, immunities and franchises, present and future hereby conveyed, or intended so to be, unto the trustees, their successors and assigns in trust, for the uses and purposes following:

Article I.

On delivery of the said bonds to the Illinois trustee, it shall certify the said bonds by signing the certificate endorsed thereon, and shall deliver the same, so certified, to the company or to its order, and only such of the said bonds as shall have been so certified by the Illinois trustee or similarly certified *mutatis mutandis* by its successor in the trust hereby created, or any bonds certified in the same manner and issued in substitution for any of the said bonds as hereinafter mentioned, shall be entitled to the security of these presents.

Article II.

Until this security shall become enforceable as hereinafter mentioned, the company shall be entitled to retain possession of all and every the property and premises conveyed, transferred and set over by them to the trustees or agreed so to be, and to possess, use, manage, employ and enjoy the same and the income derived therefrom, with its and their appurtenances, and to collect and
37 receive, take and use, the earnings, income, profits, rents and issues thereof, and to dispose of the same in any manner not inconsistent with this instrument and the intent thereof.

Article III.

This security shall become and be enforceable if, after any one of the following events shall have happened, the trustees shall declare the principal and interest owing upon the bonds to be immediately payable:

1. If any of the said bonds shall become and be due and payable according to the tenor thereof, and default shall have been made in the payment of such bonds, some one or more of them for one calendar month thereafter.

2. If default shall have been made in payment of the interest of the said bonds, or of some one or more of them, or in some part of such interest, as the same shall, from time to time, become due and payable, according to the tenor of the said bonds, or in the performance of any other of the covenants or conditions in any of the said bonds or these presents contained, and any such default shall have been continued for the period of three months after demand for such payment or performance shall have been made in writing by the Illinois trustee to the company.

3. If the company or its successors or assigns shall fail to pay or discharge any taxes, assessments, water rates or governmental charges upon the property comprised in the schedules hereto, or upon any other property now owned or hereafter acquired in substitution for or in addition to the property embraced in said first schedule, or any part thereof, before the same shall fall into arrear, or fail to keep the said property insured, as hereinafter provided, or do or suffer to be done any matter or thing whereby the lien hereby created might or could be impaired, and any such failure shall continue for thirty days after demand shall be made in writing to the company.

4. If the judgment or order shall be made, or any effective resolution of the company be duly passed for the winding up of the company, or if a distress, attachment, garnishment or execution be respectively levied or sued out against any of the chattels or property of either company, and such company shall not forthwith, upon such distress, attachment, garnishment or execution being levied or sued out, remove, discharge or pay such distress, attachment, garnishment or execution.

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Article IV.

In case this security shall have become enforceable as aforesaid the trustees may, in their discretion, and they shall, upon the request, in writing, of the holders of one-third of such of the bonds (but, in either case, without any further consent on the part of the company), either personally or by their agent or agents, attorney or attorneys, enter into possession and enjoyment of, and collect and receive and enjoy the rents, income and profits of all and singular the real and personal estate and other property of the company for the time being, subject to this security, and exclude the company therefrom; and as to the real estate specified in the schedules hereto, and the personal property and assets now owned or hereafter acquired by the company, or any other real or personal property for the time being subject hereto, may exercise any or all of the following powers, that is to say: (1), they may use, manage and control the same by superintendents, managers, receivers, agents, servants and attorneys, as the trustees may select to conduct the business in connection with the said property; (2), they may from time to time insure and keep insured, at the expense of the trust estate, the buildings, machinery and other fixtures upon the said premises erected, and the personal property connected therewith and likewise from time to time, at the expense of the trust estate

make all necessary or proper repairs, replacements, additions, renewals or improvements thereto as may seem to them judicious; and (3), they may collect and receive all the earnings, incomes, rents, issues and profits of the said real and personal property, and every part thereof. After deducting the expenses of entering into possession of, managing, operating and using the said real and personal property as aforesaid, and of all taxes, assessments or liens thereon or any part thereof, as well as a just and reasonable compensation for their own services and compensation to all agents, clerks, servants and other employés by them properly engaged and employed, the trustees shall apply all moneys arising as aforesaid to the payment of the interest in arrear, if any, or which shall, after such entry, become due and payable on such of the said bonds as shall, for the time being, be outstanding and secured hereby in the order in which such interest shall become due, ratably to the person or parties entitled thereto, without any discrimination or preference between them; and in case the principal of the said bonds shall have become due, to the payment of the said principal, and interest thereon to the date of payment, *pro rata*, without any preference or priority whatever.

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Article V.

In case this security shall become enforceable by the happening of any of the events above enumerated, it shall be lawful for the trustees, after entry as above provided, or without entry, to sell and dispose of all the premises, estates, property, assets, and rights hereby conveyed, as an entirety, or in such parts or parcels as the trustees shall, in their discretion, see fit, either by public auction or by private contract, with full power upon every such sale to make any special or other stipulations as to title or evidence or commencement of title or otherwise which the trustees shall deem proper, and also with full power to buy in or rescind or vary any contract for the sale of the said property, or any part thereof, and to resell the same, without being responsible for any loss which may be thereby occasioned, and with full power to compromise and effect compositions for the purpose aforesaid, and to execute and do all such assurances and things as they may think fit.

In case of a sale by public auction of the real estate specified in the first schedule hereto, or otherwise directly subject to these presents, and of the present and after-acquired property hereby transferred, the following conditions shall be observed, that is to say:

Such sale shall be made at some suitable place in the city of Chicago, upon such previous notice as is required by law, and notice of such sale shall also be given by publication in at least two daily newspapers published in the city of New York, and in one newspaper published in the city of Hoboken, in the State of New Jersey, and in at least two daily newspaper published in the city of Chicago, at least once in each week for six weeks next preceding such sale; but the trustees shall have power, from time to time, to

adjourn such sale, in their discretion, by announcement at the time and place advertised, without other notice.

Upon any such sale made under any part of this clause, the trustees shall have the power to make and deliver to the purchaser or purchasers of the premises, estates, properties, shares of stock, and other rights, assets, and securities sold, a good and sufficient deed or deeds, bills of sale, and other instruments of transfer and further assurance for the same, which sale, made as aforesaid, shall be a perpetual bar, both in law and equity, against the company, its successors and assigns.

Upon the making of any such sale under any part of this clause the trustees shall apply the proceeds as follows:

40 1. To pay the costs and expenses of the sale, including a reasonable compensation to the trustees, their agents, attorneys, and counsel, and all the expenses, liabilities, and advances made and incurred by the trustees in using and maintaining the property so sold, and all such taxes, water rates, and assessments superior to the lien hereby created as the trustees may think fit to discharge.

2. To the payment of the whole amount of principal of the bonds at the time unpaid, whether or not the same shall have previously become due, and of the interest which shall at that time have accrued upon said principal and be unpaid *pro rata*, without preference or priority, but ratably and in proportion to the aggregate amount of such unpaid principal and such accrued and unpaid interest.

3. If, after the satisfaction and payment of the bonds, and of the accrued and unpaid interest, as aforesaid, any surplus shall remain, the same shall be paid to the company.

Article VI.

The receipt of the trustees who shall make any sale hereinbefore authorized shall be a sufficient discharge to the purchaser for the purchase-money, and such purchaser shall not, after the payment of such purchase-money to the trustees, and obtaining their receipt therefor, be answerable for any loss, misapplication or non-application of such purchase-money, or any part thereof, by the trustees, and shall not be concerned, or entitled to inquire into the necessity, expediency, or authority for any such sale.

At any sale of the property conveyed and transferred to them hereunder, made to enforce the security of these presents pursuant to the powers hereby granted, or by judicial authority, the trustees may, if thereunto requested in writing by the holders of a majority in nominal amount of the bonds or their representatives thereunto, duly authorized in writing, bid for and purchase, or cause to be bidden for and purchased on behalf of all the holders of the bonds in the proportion of the respective interests of such holders, the said property and securities so sold, provided that the price at which such purchase is hereby authorized to be made shall not exceed the amount of all of the said bonds and the interest accrued thereon at

the time of the sale, together with the costs and expenses of such sale. And in the event of any such purchase the total amount due in respect of all the bonds, and of the interest accrued thereon, together with the last-mentioned costs and expenses, or so much of the said aggregate amount as shall equal the said purchase-money, shall be set off and allowed in account against such purchase-money as cash paid.

Any holder of the bonds may purchase the said property, or any part thereof, upon any sale thereof, and in the event of such purchase by him, he shall be allowed credit as so much cash paid for such part of the purchase-money as shall be a proper share or dividend to which the bonds held by him shall be entitled from the purchase price.

Article VII.

In addition to the power of sale and other powers hereinbefore given to them, the trustees may, in their discretion, resort to any proceedings legal or equitable in their judgment necessary or expedient for the enforcement of the lien hereby created upon all or any part of the property hereby conveyed and transferred, or agreed so to be. And all the covenants, conditions, provisions and agreements herein contained may be specifically enforced by any court of competent jurisdiction.

Article VIII.

Upon the filing of a bill in equity or other commencement of judicial proceedings to enforce the rights of the trustees, or of the bondholders under these presents, the trustees shall be entitled, as an essential part of the rights and property hereby mortgaged, without regard to the value of the property or the solvency of the company, to the immediate appointment of a receiver or receivers of the property and securities hereby mortgaged, and of the earnings, rents, issues, income, interest and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

In case this security shall have become enforceable for any reason as aforesaid, neither the company nor its successors or assigns, shall or will claim or seek to take advantage of any appraisalment, valuation, stay, extension, exemption or redemption laws now existing, or which may hereafter be passed in either of the States where the property referred to in Schedule "A" hereto annexed is situated, in order to hinder or prevent the enforcement or foreclosure of this mortgage, or the absolute sale of the premises hereby conveyed, free from any right of redemption, or the final and absolute possession of the purchaser or purchasers immediately after such sale, and the company hereby waives the benefit of all such laws.

Article IX.

In case there shall be a failure on the part of the company or of its successors or assigns to pay and discharge any taxes, water rates

assessments, or other rental charges, or other charges upon any part of said mortgaged property before the same shall fall into arrear, the trustees may pay and discharge the same, and in case there shall be a failure on the part of the company, or of its successors or assigns, to insure or keep insured the buildings now erected or which may hereafter be erected upon the real estate hereby conveyed, or upon any property hereafter acquired, or upon the fixed plant and machinery, fixtures, chattels, merchandise and other assets and appurtenances now owned or hereafter acquired by it, or connected with the business conducted by it, against loss by fire to an amount at least equal to two-thirds the fair value of such buildings, fixed plant, machinery, chattels, merchandise and other assets and appurtenances, so that the insurance money shall, in case of loss, be payable to the Illinois trustee, the latter may effect or make good any deficiency in such insurance for the benefit of the holders of the bonds secured hereby and then outstanding. In any such event the company, and its successors and assigns, shall be jointly and severally bound to pay to the Illinois trustee, and the said mortgaged property shall be charged with, and the trustees shall have a lien thereon for the repayment to it as a part of the debt thereby secured of all sums so expended in paying or discharging any taxes, water rates, assessments, governmental or other charges, or in effecting such insurance, together with all expenses connected therewith, and together also with interest on all such sums, at the rate of six per cent. per annum, and a reasonable compensation therefor to the trustees; provided, nevertheless, that any payment made by the trustees as in this clause provided shall not be deemed to be in waiver or satisfaction of the failure or default of the company, its successors or assigns, but that every such default or failure shall be deemed to continue until the company, its successors or assigns, shall have repaid to the trustees the amounts aforesaid.

Article X.

Until this deed shall become enforceable and be enforced as aforesaid, it shall not operate or be held to prohibit the company from being and remaining in possession of the said mortgaged property, and from selling or conveying, or otherwise disposing of, with the consent of the trustees, any part of such property which at any time cannot be advantageously employed in the proper and judicious use, operation and management of the business of manufacturing and selling straw paper and other kinds of paper, or of such other business as the company may conduct, free from the incumbrances and trusts hereof. And the trustees shall, if so requested by the company, have power to release or otherwise discharge from the operation of these presents any portion of the said property so conveyed or otherwise disposed of as aforesaid; provided, however (but not so as to impose any obligation hereby on the purchaser or purchasers, to whom any such property is conveyed or otherwise disposed of), that the proceeds of any such sale, conveyance or other disposition of any portion of the mortgaged prop-

erty shall be applied to the improvement of the remaining part of the said premises, or to the purchase of other property, which shall thereafter be subject to the lien of these presents, and that, in the latter case, such other property shall be conveyed to the trustees to be so held; and provided that, in case of the sale of any said mortgaged property as aforesaid, the proceeds thereof shall be deposited with and shall be held by the trustees, or with and by their successors in the trust, or as they shall direct, as a further security hereunder, until the same shall be so applied in the purchase of other property, to become subject to these presents, or in the improvement of the remaining part of the mortgaged property.

In case any moneys shall be paid to or for the benefit of the Illinois trustee under any insurance policy upon the buildings, fixed plant, machinery and other assets included in the said mortgaged property, the same may be applied to the reconstruction, replacement or repair of the said buildings, fixed plant, machinery and other property; provided, however, that such moneys shall be deposited with the Illinois trustee, or its successors in the trust, or as it shall direct, as a further security hereunder, until the same shall be so applied.

Provided, nevertheless, that nothing in this article contained shall compel the trustees or either of them to see personally to the application of any moneys under this clause, or render them responsible for any non-application or misapplication thereof, but that the trustees shall be at liberty to allow the same to be applied upon the request and under the direction of the company, its successors or assigns.

Article XI.

The company, its successors and assigns, shall and will at any time, upon the request of the trustees, and at their own cost, make, do, execute, acknowledge and deliver all such other acts, deeds and assurances in law as may be reasonably advised, devised or
44 required for effecting the intention of these presents, and for the better assuring and confirming unto the trustees and their successors in the trusts hereby created, and upon the trusts and for the purposes herein expressed, all and singular the property and premises hereby conveyed or assigned, or intended or agreed so to be.

Article XII.

The company hereby expressly covenants and agrees with the trustees to redeem and discharge the whole of the said issue of bonds, at the price and in the manner hereinafter appearing, by redeeming, on the first day of December, 1893, and on the first day of December in every succeeding year, the respective amounts of bonds shown in the table following, that is to say:

Year.	Number of bonds to be redeemed.	Year.	Number of bonds to be redeemed.
1893.....	100	1898.....	130
1894.....	105	1899.....	138
1895.....	111	1900.....	145
1896.....	117	1901.....	30
1897.....	124		
Total.....			1,000

such respective amounts having been ascertained upon the basis of applying to the said redemption a cumulative annual sinking fund of one hundred and ten thousand (\$110,000) dollars, together with the interest upon such bonds as shall have been redeemed.

The particular bonds to be redeemed on each occasion shall be ascertained by drawings to be made under the direction of the Illinois trustee, or its successors in the trust, in the preceding month of November of each year, in the city of Chicago, at a time and place therein of which at least one week's previous notice shall be given by advertisement in two daily newspapers, one published in the city of New York and the other published in the city of Chicago, in the State of Illinois. Immediately after every drawing, the company shall cause the numbers of bonds drawn for redemption to be published at least once a week for two consecutive weeks in one daily newspaper published in the city of New York, and in one such newspaper published in the city of Chicago, and shall also, in the case of any bond drawn for redemption which shall for the time being be registered, cause a notice thereof to be sent by post to the registered holder.

45 Every bond so drawn for redemption shall become redeemable and shall be redeemed by the company on the first day of December next succeeding such drawing at the price for each bond (in addition to all accrued interest) of one thousand one hundred (\$1,100) dollars in gold coin of the United States, of the standard weight and fineness. Every such bond shall thereupon, from said first day of December, cease to carry interest, unless the same shall not be redeemed, through some default on the part of the company, but the interest on all redeemed bonds shall each year be added to the annual cumulative sinking fund of one hundred and ten thousand (\$110,000) dollars. The registered or other holder of this bond, as the case may be, shall, on the redemption thereof, deliver the same to the company, together with all subsequent coupons, and shall sign such receipt (if any) as shall be reasonably required by the company. The company will forthwith, after the redemption of any bond under this clause, deliver the same duly canceled to the Illinois trustee, or its successors in the trust.

Article XIII.

Any request in writing, or other instrument in writing, required to be signed or executed by the holders of bonds, may be in any number of parts, and may be signed or executed by such bondholders in person or by attorney-in-fact, and delivery of any such request or other instrument to the Northern Trust Company or its successors in the trust hereby created, shall be in all respects sufficient and shall have the same effect as if delivered to both of the trustees.

Proof of the due execution of any such request or other instrument by the holders of the requisite amount of bonds, if made in the following manner, shall be sufficient, viz: the certificate of the company, or of any trust company, banking corporation or firm in the United States, approved by either of the trustees, or by either of their successors in the trusts. Such certificate, being acknowledged before a notary public or any other officer authorized to take the acknowledgment of deeds either by the party giving such certificate, or by any principal officer of such party, shall be sufficient proof as to the amount of the bonds held by the persons signing such request or other instrument, and as to the issue and number of such bond, and as to the signatures to such request or other instrument, and the date of the execution thereof. The holding of bond by the persons signing any such request or other instruments may also be proven by the deposit of such bonds with either of the trustees. The fact and date of the execution by any person
46 of any such request or other instrument may also be proven by the certificate of any notary public or other officer in the United States or elsewhere authorized to take the acknowledgment of deeds, that the persons signing such request or other instrument acknowledged to him the execution thereof.

Article XIV.

The trustees accept the trust hereby created, and agree to execute the same upon the following terms and conditions, to which the parties hereto mutually agree.

Neither of the trustees shall be responsible for any loss or damage occurring through any act, neglect or default of the other.

The trustees may employ or advise with legal counsel, and the proper expense thereof, and all personal expenses of the trustees about the discharge of the trusts herein, and all other reasonable and proper charges and expenses of the trustees, including their compensation or remuneration, shall be paid by the company, its successors and assigns, as they are incurred, or otherwise out of the trust estate on which they are hereby charged. The trustees may employ agents or attorneys-in-fact; and, provided that they shall have exercised reasonable prudence in the selection and employment of such agent or agents, they shall not be responsible for loss or damages in the premises caused by the act, neglect or default of such agent or agents.

The compensation or remuneration to be paid to the trustees re-

spectively shall, as from the first day of February, 1892, be as follows, that is to say : Until this security shall become enforceable and be enforced, the sum of two hundred dollars per annum to the Northern Trust Company of Illinois, and its successors in the trust. And after this security shall have become enforceable, and be enforced, not only the annual sum aforesaid, but also such additional sums respectively as shall, in view of the sum aforesaid, be a fair extra remuneration and compensation to the trustees respectively for the extra trouble and risk thereby thrown upon and incurred by them. All sums payable for remuneration or compensation hereunder shall be payable half yearly on the first day of February and the first day of August in each year, the first such payment to be made on the first day of August, 1893.

The company, its successors and assigns, shall and will indemnify and save harmless the trustees and their successors in the
47 trust against any loss and damage to which they may be subjected by the execution of this trust, not caused by the personal misconduct or neglect of the trustees or their successors in the trust.

It shall not be obligatory on the trustees to see to the record hereof, and neither of them shall incur any liability whatever for any failure or omission to record this indenture.

All recitals, statements of fact and representations herein contained are made by the company, or on its behalf, and the trustees assume no responsibility as to the correctness of any recitals, statements of fact or representations herein contained.

The trustees, respectively, shall be liable only for gross negligence or willful and intentional default in the execution of any duty or trust under this indenture on the part of the trustee sought to be made liable, and this covenant shall not be in any way restricted by any expression herein contained providing for the freedom of the trustees from liability in a particular case or under particular circumstances.

Either trustee may resign, and thereby discharge itself of the trusts hereby created, by notice in writing to be given to the company at least three months before such resignation shall take effect ; but such resignation shall take effect immediately upon the appointment of a new trustee or trustees, if such new trustee or trustees shall be appointed before the time limited by such notice.

It is understood and agreed that the trustees need not take any step which, by the terms of this mortgage, is made obligatory upon them in the execution of the trusts hereby created, if, in their opinion, such action will be likely to involve them in personal responsibility or liability, unless one or more of the said bondholders shall, as often as required by the trustees, give them satisfactory indemnity against the same, anything herein to the contrary notwithstanding ; and it is expressly agreed that the trustees shall not be obligated to pay out any money for any taxes or insurances, or for any other matter or thing, unless and until the money therefor shall first have been placed in the hands of the trustees by some party or parties beneficially interested hereunder.

The trustees or either of them may be removed by a majority in interest of the bondholders by the execution of an instrument in writing appointing one or more new trustees as hereinafter provided.

48 In case, at any time hereafter, the trustees or either of them, or any trustee hereafter appointed, shall resign or be removed by a court of competent jurisdiction, or by the appointment in manner aforesaid of a new trustee or trustees by the said bondholders or otherwise, or shall become incapable or unfit to act in the trust, or shall die, their successors in the trust shall be appointed by the holders, for the time being, of a majority in interest of the bonds, by an instrument or concurrent instruments signed by such bondholders or their attorneys-in-fact duly authorized; provided, nevertheless, that it is hereby agreed and declared that in case it shall, at any time, in the judgment of the company, prove impracticable, after reasonable exertion, to appoint, in the manner hereinbefore provided, a successor or successors to fill the vacancy in the trust, the new trustee or trustees may be appointed by an application, at the cost of the company, to any court of competent jurisdiction in which any part of the mortgaged property may be situated, upon the application of the holder or holders of one-eighth of the said bonds for the time being outstanding.

Any new trustee or trustees so appointed shall thereupon become vested with all the estate, property, rights, powers, and trusts granted or conferred upon the trustee whom such new trustee shall succeed, with the like effect as if named as such trustee herein; and the trustee or trustees so resigning or removed, or the representative of any trustee dying, and also, as far as necessary, any continuing trustee, shall, on the written request of the new trustee or trustees who may be appointed, but at the cost of the company, immediately execute a deed or deeds of conveyance to vest in such new trustee or trustees, upon the trusts herein expressed, all the property, privileges and rights hereunder of the trustee or trustees so resigning or removed.

Article XV.

The company, for itself and its successors and assigns, hereby covenants and agrees with the trustees in manner following—that is to say:

(1.) The company, and its successors and assigns, shall not and will not, during the continuance of this instrument, permit or suffer the making or creation of any mortgage or lien upon any part of the property hereby mortgaged or charged, or agreed so to be, having priority to or ranking equally with the mortgage and charge created by these presents and by the bonds hereby secured.

49 (2.) During the continuance of this security the company will pay all the principal moneys and interest becoming due in respect of the said bonds, respectively, and will observe and perform the several conditions endorsed thereon, respectively.

(3.) During the continuance of this security the company will at all times keep an accurate register of such of the said bonds as are

registered, showing the number and amount of each bond and the date of issue, and the name, address and description of every registered holder, together with the principal and amount of each bond not registered, and the date of issue thereof, and will allow the trustees and the registered holders of such of the bonds as are registered, or any person authorized by them, respectively, and the bearers of bonds not registered, at all reasonable times to inspect the said register, and to take copies or extracts from the same.

(4.) During the continuance of this security, the company and its successors and assigns, will keep and cause to be kept all buildings, fixed plant, machinery and other property of an insurable nature, forming part of the mortgaged property, insured against loss or damage by fire in an amount equal to two-thirds of the full value thereof, and in such name or names, and in such office or offices, as shall be approved by the trustees, and will duly pay all premiums and other sums of money payable for that purpose, and immediately after every such payment (if required) deliver to the Illinois trustee the receipts for the same, and will apply all moneys to be received by virtue of any such policy in making good any loss or damage which may have been occasioned to the property so insured.

(5.) During the continuance of this security the company, and its successors and assigns, will pay and discharge, or cause to be paid and discharged, so soon as the same shall become due and payable, all taxes, rates, water rates, assessments, rental charges and other charges whatsoever that are now or may at any time hereafter be charged, assessed or imposed on the mortgaged premises.

(6.) The company, at the time of the sealing and delivery of this instrument, is lawfully seized, in its own right, of a good and indefeasible estate and inheritance in fee-simple of and in all and singular the property owned by it, constituting the said properties described in the first schedule hereto attached and forming part hereof, with the appurtenances, and of all the leases, fixed plant, machinery, personal property and assets hereby transferred. The said
 50 property is now free and clear, discharged and unencumbered, of and from all former or other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances of every kind and nature.

Article XVI.

1. The Illinois trustee or the company may respectively, and the Illinois trustee shall, at the request in writing of the holders of not less than one-third of the nominal amount of the bonds at the time outstanding, at any time convene a meeting of bondholders.

2. At least ten clear days' notice specifying the place, day and hour of meeting, and the general nature of the business to be transacted, shall be given previously to any meeting of bondholders, but it shall not be necessary to specify in any such notice the terms of the resolution to be proposed. Such notice shall be given by advertising the same in one daily newspaper published in the city of New York, and in one such newspaper published in the city of Chicago, and a copy of such notice shall be sent by post to the trustees,

unless the meeting shall be convened by them, and also to the registered address of each bondholder when registered, but the accidental omission to give any such notice shall not invalidate any resolution passed by any such meeting.

3. At any such meeting persons holding or representing by proxy one-fifth of the nominal amount of the bonds for the time being outstanding shall constitute a quorum for the transaction of business. If within half an hour from the time appointed for any such meeting, a quorum is not present, the meeting shall stand adjourned to the same day and place in the next week; and, if at such adjourned meeting a quorum is not present, the bondholders present shall constitute a quorum. No business shall be transacted at any meeting unless the requisite quorum be present at the commencement of the meeting.

4. The person nominated in writing by the trustee shall be entitled to take the chair at every such meeting; and if no such person is nominated, or if at any meeting the person nominated shall not be present within fifteen minutes after the time appointed for holding the meeting, the bondholders present shall choose one of their number to be chairman.

5. Every question submitted to a meeting of the bondholders shall be decided in the first instance by a show of hands, and in the case of an equality of votes, the chairman shall, both on

51 the show of hands and at the poll, have a casting vote in addition to the votes or vote (if any) to which he may be entitled as a bondholder.

6. At any such meeting, unless a poll is demanded in writing by one or more bondholders holding or represented by proxy one-twentieth of the nominal amount of the bonds for the time being outstanding, a declaration by the chairman that a resolution has been carried by any particular majority, or lost, or not carried by any particular majority, shall be conclusive evidence of the fact.

7. If, at any meeting, a poll is demanded as aforesaid, it shall be taken in such a manner, and either at once or after an adjournment, as the chairman directs, and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

8. The chairman may, with the consent of any such meeting, adjourn the same from time to time.

9. Any poll demanded at any such meeting on the election of a chairman or any question of adjournment shall be taken at the meeting without adjournment.

10. At every such meeting each bondholder shall be entitled upon a poll to one vote in respect of every principal sum of \$1,000 secured by the bonds held by him, but except as regards holders of bonds to bearer no person other than the registered holder shall be entitled to vote, or shall be recognized.

11. Votes may be given personally, or, as regards holders of registered bonds, by proxy.

12. The instrument appointing a proxy shall be in writing under the hand of the appointer, or, if such appointer is a corporation,

under its common seal, or under the hand of some officer duly authorized in that behalf. Such instrument shall be in the form following :

Columbia Straw Paper Company.

I, ———, of ———, in the State of ———, being a holder of — registered bonds of the corporation Columbia Straw Paper Company hereby appoint ——— as my proxy to vote for me and on my behalf at the meeting of the bondholders of the said company to be held on the — day of ———, 18—, and at any adjournment thereof.

52 13. No person or corporation, other than a registered bondholder shall be appointed a proxy.

14. The instrument appointing a proxy shall be deposited at such place as the trustees may, in the notice convening a meeting, direct, or, in case there is no such place appointed, then with the trustees at their registered offices, or, if they shall have none, then at the registered office of the company, not less than forty-eight hours before the time for holding the meeting at which the person named in such instrument proposes to vote ; but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution, and no proxy shall be used at any adjourned meeting which could not have been used at the original meeting.

15. A vote given in accordance with the terms of the instrument of proxy shall be valid, notwithstanding the previous death or insanity of the principal or revocation of the proxy or transfer of the bonds in respect of which the vote is given, provided no notice in writing of the death, revocation or transfer shall have been received at the office of the company before the meeting.

16. When there are joint registered bondholders, any one of such persons may vote at any such meeting, either personally or by proxy, in respect of such bonds, as if he were solely entitled thereto, but, if more than one of such joint holders be present at any meeting personally or by proxy, that one of such persons so present whose name stands first on the register in respect of such bonds shall alone be entitled to vote in respect thereof.

17. The directors of the company may, from time to time, make such regulations (including, if thought proper, regulations requiring the deposit of bonds with the trustees or at any bank), for ascertaining that persons proposing to attend or vote at a meeting or otherwise act as bondholders to bearer in fact, hold the bonds in respect of which they propose to attend, vote or act, and such regulations shall be binding on all holders of bonds to bearer.

18. A meeting of the bondholders shall have the following powers exercisable by extraordinary resolution, viz :

(a.) Power to sanction any modification or compromise of the rights of the bondholders against the company or against its property, whether such rights shall arise under the bonds or the trust deed or otherwise.

53 (b.) Power to assent to any modification of the provisions contained in the trust deed which shall be proposed by the

company, and to authorize the trustees to concur in and execute any deed supplemental to the trust deed embodying any such modification.

(c.) Power to authorize the trustees or any receiver or receivers, when they or he shall have entered into possession of the mortgaged premises, to give up possession of the premises to the company, either conditionally or upon any conditions.

(d.) Power to sanction the release of any part of the mortgaged property.

(e.) Power to suspend the right of the bondholders as a class to take or prosecute against the company legal proceedings relating to the bonds or to any sum due under or by virtue of the same for such period or periods as the meeting shall determine.

(f.) Power to authorize the application for any purpose whatever of the net proceeds to arise from any sale, calling or conversion made by the trustees upon the application of the company, and before the trustee has entered upon the mortgaged property.

(g.) Power to require the trustees to enforce any of the covenants on the part of the company contained in the trust deed, the enforcement of which is not vested in the sole discretion of the trustees by the express terms of the trust deed.

19. An extraordinary resolution, passed at a meeting of the bondholders duly convened and held in accordance with these presents, shall be binding upon all the bondholders, whether present or not present at such meeting, and each of the bondholders and the trustees shall, subject to the provisions for their indemnity and powers of waiver in the trust deed contained, be bound to give effect thereto accordingly.

20. The expression "extraordinary resolution," where used in this article, means a resolution passed at a meeting of the bondholders duly convened and held in accordance with the provisions herein contained, by not less than three-fourths of the persons present, personally or by proxy, and entitled to vote thereat, if there be no poll; and if there be a poll, then by not less than three-fourths of the votes recorded.

54 21. Minutes of all resolutions and proceedings at every such meeting as aforesaid shall be made and duly entered in books to be from time to time provided for that purpose by the trustees at the expense of the company, and any such minutes as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting of bondholders, shall be conclusive evidence of the matters therein stated; and, until the contrary is proved, every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had to have been duly passed and had.

22. A notice may be served by the company upon the holder of any registered bonds by sending it through the post, addressed to such person at his registered address.

23. Any notice served by post shall be deemed to have been served

at the expiration of forty-eight hours after it is posted, wherever such address may be, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post-office.

24. As regards holders of bonds to bearer, notice shall be deemed to have been served upon them by the company by advertising the same twice within a week in one daily newspaper published in the city of New York, and in one such paper published in the city of Chicago. Every notice given by advertisement shall be deemed to have been served on the day of publication of the newspaper containing the same.

Article XVII.

All the covenants, stipulations and agreements of this indenture shall bind and enure to the successors and assigns of the parties respectively by and to whom the same have been made.

Article XVIII.

In the construction of these presents, except where the context shall otherwise require, the phrase "the trustees" shall be deemed and construed to include not only the trustees, parties hereto of the second part, but all and every of their successors or successor for the time being in the trusts hereof.

In witness whereof, the Columbia Straw Paper Company hath caused its official seal to be hereto affixed and attested by its
55 secretary, and these presents to be signed in twelve parts by its president; the said The Northern Trust Company hath caused its official seal to be hereto affixed and attested by its secretary, and these presents to be signed in twelve parts by its president; and Ovid B. Jameson hath hereto set his hand and seal in twelve parts the day and year first above mentioned.

[Seal Columbia Straw Paper Company.]

COLUMBIA STRAW PAPER CO.,
By PHILO D. BEARD, *Pres't.*

Attest: SAM'L H. GUGGENHEIMER, *Sec'y.*

THE NORTHERN TRUST COMPANY,
By BYRON L. SMITH, *President.*

[Seal of the Northern Trust Company.]

Attest: ARTHUR HUERTLEY,
Secretary of the Northern Trust Company.

OVID B. JAMESON.

[SEAL.]

Signed, sealed, and acknowledged and delivered by Ovid B. Jameson in presence of—

1. SAMUEL B. JUDAH.
2. MARTIN M. HUGG.
3. H'Y DAILEY.

Signed, sealed, acknowledged and delivered by Columbia Straw Paper Company and the Northern Trust Company in the presence of—

HENRY M. WOLF.
NOBLE B. JUDAH.
HENRY M. YOUNG.

56 STATE OF ILLINOIS, }
County of Cook, } ss:

Be it remembered, that on this 28th day of February, in the year one thousand eight hundred and ninety-three, before me, John D. Hood, a notary public in and for said county, in the State aforesaid, personally appeared Philo D. Beard, to me personally known, and known to me to be the identical individual whose name is subscribed to the foregoing mortgage deed of trust as the president of the party of the first part mentioned and described in the foregoing instrument, and who executed said instrument, who, being duly sworn, did depose and say: That he is the president of the Columbia Straw Paper Company, the corporation described in and which executed the said mortgage deed of trust; that he resides in the city of Buffalo, in the State of New York; that the seal affixed thereto is the corporate seal of the said company, and was duly thereto affixed by resolution of its board of directors, and that by like resolution and authority he signed the name of the said corporation and his own as president thereto in behalf of said corporation; and, I having first made known the contents thereof to him, he acknowledged the execution of the same to be the free and voluntary act and deed of the said Columbia Straw Paper Company for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my official seal this twenty-eighth (28th) day of February, 1893.

[Seal of John D. Hood, Notary Public.]

JOHN D. HOOD,
Notary Public.

57 STATE OF ILLINOIS, }
County of Cook, } ss:

Be it remembered that on this 28th day of February, in the year one thousand eight hundred and ninety-three, before me, John D. Hood, a notary public in and for the said county, in the State aforesaid, personally appeared Byron L. Smith, to me personally known, and known to me to be the identical individual whose name is subscribed to the foregoing mortgage deed of trust, who, being duly sworn, did depose and say: That he is the president of the Northern Trust Company, the corporation described in and which executed the said mortgage deed of trust; that he resides in the city of Chicago; that the seal affixed thereto is the corporate seal of the said company, and was duly thereto affixed by the secretary of said company, and that he signed the name of the said corporation and his own as president to said mortgage deed of trust in behalf of said

corporation; and I, having first made known the contents thereof to him, he acknowledged the execution of the same to be the free and voluntary act and deed of the said The Northern Trust Company for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this twenty-eighth (28th) day of February, 1893.

[Seal of John D. Hood, Notary Public.]

JOHN D. HOOD,
Notary Public

STATE OF INDIANA, }
County of Marion, City of Indianapolis, } ss:

Be it remembered that on this second day of March, in the year one thousand eight hundred and ninety-three, before me, Frederick A. Joss, a notary public, duly commissioned and qualified, personally appeared the within-named Ovid B. Jameson, to me known, and known to me to be the identical individual described in, and whose name is subscribed to, and who executed the foregoing mortgage deed of trust as a party thereto, and acknowledged to me that he executed the same as his free and voluntary act and deed.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this second day of March, 1893.

[Notarial Seal, Indiana.]

FREDERICK A. JOSS,
Notary Public

SCHEDULE A.

Referred to in and made a part of the foregoing mortgage deed of trust.

Freehold Properties.

The following-described real estate in Whiteside county, Illinois, to wit:

Beginning at a point on the north line of River street, in the village (now city) of Rock Falls, one hundred and forty-three (143) feet easterly from the intersection of the said north line of River street with the west line of Grove street; thence easterly on said north line of River street four hundred and sixty (460) feet, more or less, to a point two and one-half ($2\frac{1}{2}$) feet east of where the west line of lot three (3), in block four (4), in said Rock Falls, if continued across River street, would strike the south line of block "B;" thence northerly on a line at right angles with said south line of block "B" eighty (80) feet to the north line of block "B;" thence westerly along said north line four hundred and sixty (460) feet, more or less, to a point in a line running through the point of beginning at right angles with said north line of River street; thence southerly eighty (80) feet to the point of beginning, being a part of said block or lot "B," in Rock Falls, and part of the north-

east fractional quarter of section twenty-eight (28), in township twenty-one (21) north, range seven (7) east of the fourth principal meridian.

Also all that part of the north embankment of the main race of Augustus P. Smith lying between the east and west lines of the above-described tract of land if extended northerly across said race and embankment, except a small part thereof heretofore deeded by said Smith to Henry F. Batcheller by deed dated August 15, 1872, and recorded in Book No. 64, page 28, among the records of said county.

59 Also a water power of twenty-four hundred (2,400) inches of water under a six (6) foot head, as the dam of the Sterling Hydraulic Company now exists, or its equivalent in power in case said hydraulic company or its assigns should raise said dam.

It is expressly agreed, however, by and between the parties hereto that the above-described lands, premises and water power are conveyed subject and liable to like covenants, agreements, conditions, stipulations and reservations as are contained, by reference, in three certain deeds thereof to the Church Paper Company, dated respectively, July 30, June 30 and November 28, 1891, and being recorded, respectively, in Book 130 on page 108, Book 130 on page 109 and Book 127 on page 172 of the land records of said county, so far as the same are applicable to said lands, premises and water power hereby conveyed.

Also hydraulic lot number four (4), in Mill addition to the town of Lyndon.

Also a piece of land extending east and west one hundred (100) feet, and north and south twenty-six (26) feet, and situate on the south side of the race from the land last above described, and directly in front of and opposite thereto, the east and west lines, respectively, of both of said tracts being on the same lines.

Also beginning at the northwest corner of hydraulic lot number three (3), in Mill addition to said Lyndon; thence southerly along the west line of said lot to a point on the prolongation easterly of the south line of the paper mill brick building as it now stands on hydraulic lot number four (4), in said Mill addition; thence easterly at right angles to the west line of said lot three (3) twenty-five (25) feet; thence northerly and parallel with said west line of lot three (3) to the north line of said lot three (3); thence westerly along said north line to the place of beginning.

Also the following-described real estate in Whiteside county, Illinois, to wit:

Commencing at a stake on the southwest fractional quarter $\frac{1}{4}$ of section fifteen (15), in township twenty (20) north, range five (5) east of the fourth principal meridian, located on the east line of Mill street, in Mill addition to the town of Lyndon, in Whiteside county, as now platted, two (2) chains and eight (8) links south of the intersection of the south line of Commercial street with the east line of said Mill street; thence running south five (5) chains and fifty-two (52) links on the east line of said Mill street to a point in the center of Warner street, were the same extended east of said Mill street; thence east seven (7) chains and twenty-four (24)

links; thence north five (5) chains and fifty-two (52) links; thence west seven (7) chains and twenty-four (24) links to place of beginning; containing four (4) acres, more or less.

Also a water power equal to two thousand (2,000) inches of water under a six (6) foot head, said water power being created by the dam and works of the Lyndon Hydraulic and Manufacturing Company, at Lyndon, in said county, and being the same water power conveyed to the Church Paper Company by the Valley Paper Company, by deed dated June 30, 1891, recorded among the land records of said county, in Book 117 of Records, on page 527.

Also the following-described real estate in Whiteside county, Illinois:

Lot eight (8) and part of lot nine (9) of Sterling Hydraulic lands in Whiteside county, Illinois, described as follows, to wit:

Commencing on the north wall of the Sterling Hydraulic Company's race, two hundred twenty-three and one-half ($223\frac{1}{2}$) feet westerly from the center of the west sill of said company's bulkhead, being fifty (50) feet west of the southwest corner of the tract of land conveyed to Thomas Hunt; thence northerly, parallel with the west line of said Thomas Hunt's to the south line of Wallace street in Dement & Mason's addition to Sterling; thence westerly along the south line of Wallace street fifty (50) feet; thence southerly parallel with said first line to said company's north race wall; thence easterly along the north race wall fifty (50) feet to the place of beginning; being the same lot that is now platted and recorded as lot eight (8) of said hydraulic company's lands in the northeast fractional quarter ($\frac{1}{4}$) of section twenty-eight (28), township twenty-one (21) north, of range seven (7) east; north of Rock river.

Also a water power of one thousand (1,000) inches of water under a six (6) foot head.

Also a water right of way south of said race twenty (20) feet wide for tail-race and waste-water race to Rock river.

Also a strip twenty-five (25) feet wide, off the east side of hydraulic lot No. nine (9), being west of and adjoining said lot No. eight (8).

61 Also, the following-described lots, pieces, or parcels of land situated in the city of Elmwood, county of Peoria, and State of Illinois, and known and described as follows, to wit:

Commencing at a point in the south line of Poplar street in said city of Elmwood in said county, four hundred and seventeen and one-half ($417\frac{1}{2}$) feet east of the northeast corner of block "B B" in said town (now city) of Elmwood, as laid out by William J. Phelps, according to a plat filed in the office of the recorder of said Peoria county, in Book "N. A.," pages 16 and 17, running thence south eighty (80) feet; thence west one hundred and fifty (150) feet; thence south one hundred and sixty (160) feet; thence east two hundred and eighty-three (283) feet and two (2) inches; thence north two hundred and forty (240) feet to the south line of Poplar street; thence west one hundred and thirty-three (133) feet and two (2) inches, to the place of beginning; including all of lots twelve (12) and thirteen (13) in block "D D," and the south half ($\frac{1}{2}$) of lots one (1), two

(2), and three (3), in block "C C," in said subdivision; also those parts of Rose and Sycamore streets now vacated in said subdivision as are included in the above description, all situated in the west half ($\frac{1}{2}$) of the southwest quarter ($\frac{1}{4}$) of section eight (8), township nine (9) north, range five (5) east of the fourth principal meridian in said county of Peoria.

Also the following-described lots, pieces, or parcels of land, situated in the city of Pontiac, county of Livingston and State of Illinois, and known and described as follows, to wit: Beginning at a point on the east line of the west half ($\frac{1}{2}$) of the southwest quarter ($\frac{1}{4}$) of section twenty-two (22), township twenty-eight (28) north, range five (5) east of the third principal meridian, fifty (50) links south of the north line of Washington street, in the city of Pontiac; thence west with the course of said street ten (10) chains; thence south seven (7) chains to the center of the Vermillion river; thence up the river along its center to the Chicago & Alton Railroad lands; thence northeasterly along the line of said railroad lands to the intersection with the east line of said tract; then north about seven (7) chains to the place of beginning—containing about seven (7) acres; also lots seven (7), eight (8), nine (9), ten (10), eleven (11) and twelve (12), in block twenty (20), and lot nine (9), in block twenty-one (21); all in Fell's addition to said Pontiac, county of Livingston and State of Illinois.

62 Also, the following-described real estate in La Salle county, Illinois, to wit:

A tract of land near the village of Dayton, in said La Salle county, in the northeast quarter (N. E. $\frac{1}{4}$) of section thirty-two (32), township thirty-four (34) north, range four (4) east of the third principal meridian, described as follows, to wit: Beginning at a point sixty (60) feet northwesterly from the northwest corner of the foundation of the old Stadden mill on the east bank of the feeder to the Illinois and Michigan canal, in the northwest fraction of the northeast quarter (N. E. $\frac{1}{4}$) of section thirty-two (32) aforesaid; thence southwesterly along the east bank of said feeder thirty (30) rods; thence east to Fox river; thence northeasterly along the west bank of said river thirty (30) rods; thence westerly to the place of beginning, containing two (2) acres, more or less; also one-sixteenth of the water which flows in Fox river, equal to 47-horse power, more or less.

Also, the following-described real estate in La Salle county, Illinois, to wit:

The west thirty (30) feet of lot — (12), all of lot thirteen (13) and the east twenty (20) feet of lot fourteen (14), in Water block, in the Marseilles Land and Water Power Company's addition to Marseilles in La Salle county, Illinois, also described as "Commencing at a point on the south side of a thirty (30) foot street on the south side of the north head race, three hundred and sixty-five (365) feet westerly along said road, from the northeast corner of Rickord & Company's flouring mill; thence westwardly along said road one hundred and fifty (150) feet, thence southerly to tail-race; thence easterly one hundred and fifty (150) feet, on tail-race to the southwest corner of Augustus Adams & Sons' lot; thence northerly to

the place of beginning;" and also all right, title, and interest in and to a certain water lease bearing date July 29, 1868, made and executed by the said Marseilles Land and Water Power Company to Jacob P. Black, said lease being for the term of ninety-nine (99) years from the date thereof.

Also, the following-described real estate in La Salle county, Illinois, to wit:

All of lot seven (7) and the east forty (40) feet of lot six (6) in Water block, in the Marseilles Land and Water Power Company's addition to Marseilles, in La Salle county, Illinois.

63 Also the following-described real estate in La Salle county, Illinois, to wit:

A tract of land containing three and seventy-eight one-hundredths (3.78) acres, described as follows, to wit: Commencing three hundred and seventy-six (376) feet south by thirty-four and one-half ($34\frac{1}{2}$) degrees east of the northwest corner of the southwest quarter (S. W. $\frac{1}{4}$) of the southeast quarter (S. E. $\frac{1}{4}$) of section twenty-six (26), township thirty-one (31) north, range three (3) east of the third principal meridian; thence north, fifty-seven and one-half ($57\frac{1}{2}$) degrees east, four hundred and twenty-four (424) feet; thence in a southeasterly direction, at right angles with the last line, three hundred (300) feet, to the land occupied by the Chicago, Alton & St. Louis Railroad Company as a right of way; thence south, fifty-seven and one-half ($57\frac{1}{2}$) degrees west, on the line of the railroad land, five hundred and fifty (550) feet, to the center of the Vermillion river, thence in a northwesterly direction, at right angles to said last line, along the center of said river, three hundred (300) feet; thence north, fifty-seven and one-half ($57\frac{1}{2}$) degrees east, one hundred and twenty-six (126) feet to beginning.

Also the following tract, to wit: To get starting point, commencing at the northwest corner of the southwest quarter (S. W. $\frac{1}{4}$) of the southeast quarter (S. E. $\frac{1}{4}$) of section twenty-six (26) aforesaid; thence run south, thirty-four and three-quarters ($34\frac{3}{4}$) degrees east, three hundred and seventy-six (376) feet; thence south, thirty-two and one-half ($32\frac{1}{2}$) degrees east, three hundred and fifty (350) feet, to the center of the Chicago, Alton & St. Louis railroad; thence south, sixty-three and one-half ($63\frac{1}{2}$) degrees east, thirty (30) feet; then commencing at this point run south, sixty-three and one-half ($63\frac{1}{2}$) degrees east, one hundred and fifty-four (154) feet; thence north, seventy-six and three-quarters ($76\frac{3}{4}$) degrees east, two hundred and fifty (250) feet; thence south, eighty-one (81) degrees east, three hundred and twelve (312) feet; thence north, eight and one-half ($8\frac{1}{2}$) degrees west, four hundred forty-seven (447) feet; thence south, sixty and one-quarter ($60\frac{1}{4}$) degrees west, three hundred and eighteen (318) feet; thence south, fifty-seven and one-half ($57\frac{1}{2}$) degrees west, four hundred thirty-two (432) feet, to said starting point, containing three and sixty-two one-hundredths (3.62) acres.

Also the following-described real estate in Winnebago county, Illinois, to wit:

64 A part of the north part of the south half ($\frac{1}{2}$) of the southwest quarter (S. W. $\frac{1}{4}$) of section twenty-six (26), township forty-four (44) north, range one (1) east, described as follows:

Commencing where the north line of said south half intersects the middle of Seminary street, formerly Prospect street; thence southwesterly along the center of said street four (4) chains and thirty-three (33) links; thence west thirteen (13) chains and fifty (50) links, more or less, to Rock river; thence upstream, along said river, five (5) chains and thirty-four (34) links, more or less, to the north line of said south half; thence east eleven (11) chains and sixty (60) links, more or less, to the place of beginning; also all right of the grantor herein to have Sayer street opened as mentioned in one or more of the deeds hereinafter referred to, excepting, however, the acre conveyed to Mary E. Colwell, October 8, 1868, by deed recorded in Book 72 of Deeds, page 368, in the office of the recorder of Winnebago county, Illinois; also one and twenty-nine one-hundredths (1.29) acres conveyed on the same day to Susan F. Colwell by deed recorded in the same book, on page 369; also excepting the land conveyed to the Chicago, Madison & Northern Railroad Company by deed recorded in the office of said recorder, in Book 127 of Deeds, page 115.

Also the following described real estate situated in the city of Rockford, county of Winnebago and State of Illinois, to wit:

Lots five (5) and six (6) in the south block of the plat of Rockford Water Power Company's lots in said city, west of Rock river.

Also, the certain strip of land lying south of the south line of said lots five (5) and six (6) in said south block of the Rockford Water Power Company's lots west of Rock river, which said strip is bounded as follows, to wit: On the north by the south line of said lots five (5) and six (6); on the east by a continuation southerly of the east line of said lot five (5) to a point one hundred and eighty-one (181) feet from the southerly line of Mill street; on the west by a continuation southerly of the west line of said lot six (6) to a point one hundred and sixty-nine and seven-tenths (169.7) feet from the southerly line of said Mill street, and on the south by a line connecting the south ends of the east and west lines above named.

Also a part of lot E, as shown in the recorded plat of the west part of the northwest quarter of section twenty-seven (27) and the southwest part of the southwest quarter ($\frac{1}{4}$) of section twenty-two (22), township forty-four (44) north, range one (1) east of the third

principal meridian. Said part of said lot E being described

65 as follows: Commencing at the northwest corner of said lot E, thence south on the west line thereof, four hundred and twelve and thirteen one-hundredths (412.13) feet, thence southeasterly five hundred and thirty-one and eight-tenths (531.8) feet (parallel with the northerly line of said lot E) to the east line of said lot E; thence north on said east line four hundred and twelve and thirteen one-hundredths (412.13) feet to the northeast corner of said lot E; thence northwesterly on the northerly line of said lot E, five hundred and thirty-one and ninety-six one-hundredths (531.96) feet to the place of beginning, containing five (5) acres.

Also, twelve hundred twenty-thousandths ($\frac{12000}{200000}$) of all the water in Rock river in accordance with and subject to the provisions of a certain deed from the Rockford Water Power Company to Levi Rhoades and Isaac Utter, dated June 26, 1866, and recorded in said Winnebago county on July 20, 1866, in Book 67 of Deeds, at page 426.

Also, four hundred twenty-thousandths ($\frac{4000}{200000}$) of all the water in Rock river in accordance with and subject to the provisions of a certain deed from David L. Bartlett and wife and John Bartlett to said Levi Rhoades and Isaac Utter, dated February 23, 1872, and recorded March 1, 1872, in said Winnebago county, in Book 81 of Deeds, at page 215.

Also the following-described real estate, situated in the county of Sangamon and State of Illinois, to wit:

The southwest part of the southeast quarter (S. E. $\frac{1}{4}$) of section nine (9), and the northwest part of the northeast quarter (N. E. $\frac{1}{4}$) of section sixteen (16), township sixteen (16) north, range four (4) west of third principal meridian, bounded as follows:

Beginning on the right or east bank of the Sangamon river at the marginal corner of said quarter sections, and running thence in a southeasterly direction along the right or east bank of said Sangamon river with the meanders thereof, thirteen and thirty one-hundredths (13.30) chains, to the center of the east end of the iron bridge across said river; thence the following course, being the courses and distances along the traveled road from said bridge to the town of Riverton, viz: North, $49\frac{3}{4}^{\circ}$ east, one and thirty-nine one-hundredths (1.39) chains; north, 24° east, one and eighty one-hundredths (1.80) chains; north, $2\frac{1}{2}^{\circ}$ west, two (2) chains; north, 24° west, two and seventy one-hundredths (2.70) chains; north, 6° west, five and twenty one-hundredths (5.20) chains, and north, $27\frac{1}{2}^{\circ}$ east five (5) chains, to a stake on the north side or bank
66 of a small brook or ravine, thence in a northwesterly direction down the center of said brook or ravine, seven and thirty one-hundredths (7.30) chains, to its mouth or inlet into the big branch running westerly through said town of Riverton to said river; thence westerly down the center of said branch to its mouth in the right bank of said river; thence up the right bank of said river, with the meanders thereof, seven and forty-eight one-hundredths (7.48) chains, to the place of beginning; containing nine and eighty-four one-hundredths (9.84) acres; excepting, however, all coals and minerals under the surface of said tract.

Also the following-described real estate in Sangamon county, Illinois, to wit:

Lots fourteen (14) to twenty-one (21), both inclusive, and the west half ($\frac{1}{2}$) of lot twenty-two (22), in Bullock's addition to the city of Springfield.

Also the following-described real estate in Rock Island county, Illinois:

That part of lot nineteen (19) in the southwest fractional quarter ($\frac{1}{4}$) north of Rock river, in section fourteen (14), township seventeen (17) north, of range two (2) west of the fourth (4th) principal meridian.

ian, as follows: Bounded on the south and east by the north or main channel of Rock river, on the north and east by the right of way of the Rock Island and Peoria Railroad Company; on the north and west by the canal of the Rock River Navigation and Water Power Company; on the west by the east line of land owned by Bailey Davenport; also 2,100 inches of water to be measured and drawn from said canal, as specified in a deed from the National Paper Company to James Frank Robinson, conveying the said premises, dated June 5, 1884, and filed for record July 5, 1884.

Also the following-described real estate in Kendall county, Illinois, to wit:

A part of lot three (3) of block five (5), in Black's addition to Yorkville, in Kendall county, Illinois, said part being described as follows, to wit: Commencing on the north line of Hydraulic avenue, sixty-six (66) feet east of the southwest corner of said lot three (3); thence east along the south line of said lot three (3) four hundred (400) feet; thence north at right angles with the south line of said lot three (3), to the south bank of Fox river; thence westerly along the south bank of said river to a point sixty-six (66) feet east of the northwest corner of said lot three (3); thence
67 south, parallel to the west line of said lot three (3), to the place of beginning, including one-half of the water power and dam across Fox river.

Also the following-described lands in Kendall county, Illinois, to wit:

One undivided half ($\frac{1}{2}$) part of a part of the north fraction of the northwest fractional quarter of section thirty-three (33), in township thirty-seven (37) north, of range seven (7) east of the third principal meridian, described as follows, to wit: Commencing forty-four (44) links east and south, six (6) degrees west, four (4) chains and ninety (90) links, from the northeast corner of block twenty-two (22), in the town of Bristol, and four (4) chains north of high-water mark in Fox river, running thence east on a line parallel with said Fox river, thirty (30) rods; thence south, six (6) degrees west, sixteen (16) rods, to Fox river, to the north bank thereof; thence west along the north bank of Fox river, thirty (30) rods; thence north, six (6) degrees east, sixteen (16) rods, to the place of beginning, containing three (3) acres of land, more or less.

Also the following-described real estate, to wit: A part of lot three (3), in block five (5), Black's addition to the village of Yorkville, Kendall county, Illinois, and part of the northwest quarter (N. W. $\frac{1}{4}$) of section thirty-three (33), in township thirty-seven (37) north, of range seven (7) east of the third principal meridian, described by courses and distances as follows, to wit: Commencing at a point which is four hundred sixty-six (466) feet east from the southwest corner of said lot three (3), and at the southeast corner of premises formerly owned and occupied by Charles J. Black and Lucius Clark, and on the north line of Hydraulic avenue, and running thence easterly along the north line of Hydraulic avenue, and north line of the Fox River Valley railroad, eleven (11) chains and eighty-five (85) links, to lands formerly owned by James McClellan; thence

north along the line of said land one (1) chain, more or less, to the south bank of Fox river; thence westerly, along the south bank of Fox river, to the northeast corner of said premises, formerly owned and occupied by said Black and Clark, to a point opposite the place of beginning; thence south, on the line of said premises, formerly owned and occupied by said Black and Clark, one (1) chain, more or less, to the place of beginning; containing one (1) and sixty-four one-hundredths ($1\frac{64}{100}$) acres, more or less, and upon which said

68 premises were situated the Fox River Company's paper mill buildings; also one undivided half part of the water power, including the undivided half part of the dam across Fox river, and known as the J. P. and E. A. Black water power on said Fox river, at Yorkville, Kendall county, Illinois.

Also the following-described real estate in the city of Vandalia, in the county of Fayette and State of Illinois, to wit:

The west half of outlot thirty-nine (39), and that part of outlot thirty (30) described as follows, viz: "Beginning at the northwest corner of said outlot and running thence east two hundred and seventy-two and one-fourth ($272\frac{1}{4}$) feet; thence south two hundred and forty (240) feet; thence west two hundred and seventy-two and one-fourth ($272\frac{1}{4}$) feet; thence north to the place of beginning."

Also, that part of outlot thirty-five (35), described as follows, viz: "Commencing at a point in the center of Gallatin street, two hundred and seventy-two and one-fourth ($272\frac{1}{4}$) feet east of the west line of said outlot, and running northeasterly (variation fifty-four (54) degrees and fifteen (15) minutes east) to the south line of the right of way of the St. Louis, Vandalia and Terre Haute railroad; thence southwesterly along said south line of said right of way to the west line of said outlot; thence south to the southwest corner of said outlot; thence east two hundred and seventy-two (272) feet, to the place of beginning."

Also all the following-described real estate, situated in the town of St. Charles, county of Kane and State of Illinois, to wit:

Part of the east fraction of the southwest quarter (S. W. $\frac{1}{4}$) of section twenty-seven (27), township forty (40) north, range eight (8), east of the third (3rd) principal meridian, described as follows, to wit:

Commencing at a point sixty (60) feet westerly of and in a line with the north line of Walnut street, from the southwest corner of block two (2), of the original town of St. Charles, aforesaid, on the east side of Fox river; thence northerly and parallel with the east line of First street, of said town, one hundred and ten (110) feet; thence westerly and parallel with the north line of Walnut street to Fox river; thence down said river to a point which would be in the north line of Walnut street were the same extended westerly to said river; thence easterly to the place of beginning; thence southerly parallel with the east line of First street, to intersect with

69 Fox river; thence up said river to a point which would be in the north line of Walnut street, were the same extended westerly to said river; thence easterly to the place of

beginning.

Together with six hundred (600) square inches of water to be taken out of the race which runs through the above-described premises at that spot where the paper mill now stands.

Also all the following-described real estate, in North Joliet, in Will county, State of Illinois, to wit:

Lots three (3), four (4) and five (5), in block thirty-six (36), and lot one (1) in block thirty-seven (37), together with all interest in the land between said lots five (5) and one (1)—(connected with a leasehold—see "B").

Also all the following-described real estate in Henry county, Indiana, to wit:

"Beginning at a point on the east boundary line of the tract of and deeded to Nancy J. Barrett *et al.*, by Charles E. Williams, August 6, 1886, and thirty (30) feet north of the center of the Cincinnati, St. Louis and Pittsburgh Railway track; thence north eight (8) rods to a stake; thence westwardly, parallel with said railway, sixty-eight and one-half ($68\frac{1}{2}$) rods; thence south eight (8) rods; thence eastwardly, parallel with said railway, sixty-eight and one-half ($68\frac{1}{2}$) rods, to the place of beginning; containing three and twenty-one one-hundredths (3.21) acres, and being a part of the southwest quarter (S. W. $\frac{1}{4}$) of section thirty-three (33), township sixteen (16) north, range nine (9) east of the second principal meridian."

Also the following real estate in Tippecanoe county, in the State of Indiana, to wit:

(a.) A part of the west fraction of the southwest fractional quarter ($\frac{1}{4}$) of section twenty-nine (29), township twenty-three (23) north, range four (4) west, described as follows, to wit:

Beginning at a point in the southeasterly side of Wabash avenue, seventy-three (73) feet east of the southeast corner of fractional lot No. one (1) in Peter Coon's First addition to La Fayette; thence running southeasterly at right angles with Wabash avenue, one hundred and thirty (130) feet, more or less, to the west line of the right of way of the Louisville, New Albany and Chicago railroad; thence south about sixty-two and one-quarter ($62\frac{1}{4}$) degrees west, three hundred and sixty-four (364) feet to a point twelve (12) feet

70 distant from the southeasterly side of Wabash avenue, measuring at right angles to said avenue; thence northwesterly twelve (12) feet to said avenue; thence northeasterly along the southeasterly side of Wabash avenue to place of beginning.

(b.) Also the following-described track in said fractional quarter section, to wit:

Commencing at the southeast corner of fractional lot No. one (1) in Peter Coon's First addition to La Fayette; thence running southerly along the northwesterly line of Wabash avenue three hundred and sixty-three (363) feet to an angle in the avenue; thence southwesterly on the northwesterly line of said avenue six hundred and fifty (650) feet, more or less, to the section line; thence north on said section line to the southeasterly line of the Wabash and Erie canal; thence along the southeasterly line of said canal to the southwest corner of said fractional lot No. one (1); thence on the southerly

line of said lot to place of beginning; containing two (2) acres more or less.

(c.) Also a tract of land in said southwest fractional quarter of section twenty-nine (29), ten (10) feet square, around a spring which now supplies the fountain pump situated on said tract of land last described as tract "b," the northwest line of said tract of 10 feet square to bound on the southeast side of the turnpike road leading into Ohio street, with the following reservations to Peter Coon, his heirs and assigns forever, to wit:

Said Peter Coon, his heirs and assigns forever, are to have free ingress to and egress from said spring and to have the privilege of the use of one-third of the water of said spring, to be taken therefrom in pipes, and the grantees of Peter Coon, their heirs and assigns, are by special reservation restricted to conduct the undivided one-sixth ($\frac{1}{6}$) of two-thirds ($\frac{2}{3}$) of the water of said spring by pipes, so that neither said Peter Coon, nor his heirs, nor his assigns, nor the said grantees, their heirs nor their assigns, are to have the privilege of dipping or using the water from the head of said spring.

(d.) The undivided one-sixteenth ($\frac{1}{16}$) part of the south fraction of the southeast quarter (S. E. $\frac{1}{4}$) of section thirty (30), in township twenty-three (23) north, range four (4) west—except that portion set off to the heirs of Newberry Stockton, Junior, deceased—containing in all twenty-seven (27) acres, more or less.

All of said real estate being subject to the incumbrance of railroads, highways and canal now established thereon.

71 Also the following-described lands, situated in the county of Blackhawk, and State of Iowa, to wit:

1. Lot twenty-four (24) in Mill Square addition to Cedar Falls.

2. A piece of land described as "commencing at the southwest corner of said lot twenty-four (24), running thence south fifty (50) feet; thence east parallel with the south line of said lot twenty-four (24) two hundred (200) feet; thence north fifty (50) feet, to the southeast corner of said lot twenty-four (24); thence west along the south line of said lot, to the place of beginning."

3. Also a part of Water street in said city of Cedar Falls, described as commencing at the southwest corner of said lot twenty-four (24), thence south fifty (50) feet; thence west twenty-five (25) feet; thence north one hundred and ten (110) feet; thence east twenty-five (25) feet to the west line of said lot twenty-four (24); thence south along said west line sixty (60) feet to the place of beginning.

4. Also a tract of land described as commencing at a point twelve (12) rods and four (4) feet east of the northeast corner of lot one (1) in block four (4) in said Cedar Falls, running thence east nine (9) rods; thence south at right angles sixteen (16) rods; thence west at right angles five (5) rods; then north at right angles ten (10) rods; thence west at right angles four (4) rods; thence north at right angles six (6) rods, to the place of beginning.

5. Also lots one (1), two (2), three (3), four (4) and eight (8) in block two (2), and lots one (1) and two (2) in block three (3), in Bradley's addition to Cedar Falls.

6. Also the north twenty-five (25) acres of the northeast quarter ($\frac{1}{4}$) of the southeast quarter ($\frac{1}{4}$) of section twelve (12) in township eighty-nine (89), north, of range fourteen (14), west of the fifth (5th) principal meridian, except a triangular piece in the northeast corner described as: "Commencing at a point twenty-three (23) rods west of the northeast corner of said northeast quarter ($\frac{1}{4}$) of southeast quarter ($\frac{1}{4}$) of section twelve (12); thence east twenty-three (23) rods; thence south twenty-three (23) rods; thence to the place of beginning."

Also except a piece of land in the southeast corner of said northeast quarter ($\frac{1}{4}$) of southeast quarter ($\frac{1}{4}$) described as being thirty-one (31) rods by thirty-one (31) rods.

72 Excepting from the above property that part of all of said real estate owned and occupied by the Chicago, St. Paul & Kansas City Railway Company.

Together with the right to use the quantity of one thousand (1,000) inches of water power appurtenant to the above-described premises or some part of said premises.

Also the following described real estate situated in the county of Clinton and State of Iowa, to wit:

A part of the southeast fractional quarter (S. E. fr. $\frac{1}{4}$) of section thirty-one (31), township eighty-two (82) north, range seven (7) east of the fifth principal meridian, known as:

Lots Nos. nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15) and sixteen (16) in block fifty-eight (58); lots fifteen (15), sixteen (16), seventeen (17) and eighteen (18) in block fifty-seven (57); and the east one hundred and thirty-three (133) feet of fractional block number fifty-nine (59), all in Deed's addition to the city of Lyons; and also that part of Jackson street in Deed's addition aforesaid which lies east of Fifth street in said addition; also

A part of section six (6), township eighty-one (81) north, range seven (7) east of the fifth principal meridian, known as lots five (5), four (4), three (3), two (2), and fractional lot one (1) in block number one (1) Ringwood, as shown by the plat of Ringwood; also

That part of section six (6) aforesaid bounded and described as follows: Beginning at the intersection of the north line of said section six (6) with the Mississippi river, running thence in a southerly direction along the west shore of said river with the meanderings thereof to Arnold street; thence westerly along the north line of said Arnold street to Fifth street; thence northerly along the east line of said Fifth street to the north section line; thence east on the section line to the place of beginning, subject to the right to use the shore to store logs.

All of the above being subject to the right of way of the Chicago, Milwaukee & St. Paul railway along Fifth street.

Also the following-described real estate in the county of Lee, State of Iowa, to wit:

Block twenty-four (24), and the north three hundred (300) feet of lot one (1) in block thirty-four (34) in the Southwest addition to the city of Fort Madison, said Southwest addition being a subdivision

73 of the fractional southwest quarter (S. W. fr. $\frac{1}{4}$) of section four (4), and the fractional northwest quarter (N. W. fr. $\frac{1}{4}$) of section nine (9), both tracts being in township sixty-seven (67) north, range four (4) west, being a part of the half-breed Sac and Fox Indian reservation in said Lee county.

Also the following-described land in Jackson county, Michigan, to wit:

That part of lots eleven (11) and twelve (12), in Prison reservation, which lies north of Trail street and west of the land of the Jackson, Lansing & Saginaw Railroad Company.

Also the following-described property in Monroe county, Michigan, to wit:

A tract of land in the third ward, in the city of Monroe, being on old land claim No. 346, south of the River Raisin, which land is bounded on the north and west by the Lake Shore and Michigan Southern railway, east by the land the estate of J. M. Sterling, and south by First street, and more particularly described according to a survey made by S. M. Bartlett, county surveyor, as follows:

Beginning at a point in the center of First street, where the said street intersects the east line of said claim 346, running thence north 57 degrees and 30 minutes west, in the center of First street, eight hundred (800) feet; thence at right angles, north, 32 degrees 30 minutes east, thirty-three (33) feet, to the south side of the Lake Shore & Michigan Southern railway; thence easterly along the south side of said railway seven hundred and eighty-eight (788) feet, to the south side of Front street; thence along the line of said street fifty-one and one-half ($51\frac{1}{2}$) feet, to a post in the east line of said claim 346; thence running along the east line of said claim south, 32 degrees and 30 minutes west, three hundred and seventy-one (371) feet, to the place of beginning; containing three and four-tenths (3.4) acres, more or less.

Also the following-described lots, tracts, or parcels of land, lying, being and situate in the county of Pike, and State of Missouri, to wit:

All the real estate heretofore belonging to the Clarksville Paper Company, and more particularly described as follows, to wit:

A certain lot of land, being in the southwest quarter of fractional section nine (9), township fifty-three (53) north, range one (1) east of the fifth principal meridian, beginning on the Mississippi river one hundred (100) feet below the lot or piece of land conditionally granted by John Miller to William Simonds, running
74 back one hundred and forty (140) feet and fronting two hundred and fifty (250) feet on the river, the same being known as the "old Clarksville mill lot," situate near the upper limits of the city of Clarksville, and heretofore conveyed by Zebulon Jones and wife to Daniel Douglas, and by Daniel Douglas to Clifford Roberts & Co., and known as the lot on which the old Bluff mill formerly stood, reserving the right of way for the tracks of the St. Louis, Keokuk & North-western railroad and Calumet street, in the county of Pike and State of Missouri;

Otherwise described as: Beginning at a set stone on the bank of

the Mississippi river on the section line between sections eight (8) and nine (9) of township fifty-three (53) north, range one (1) east of the fifth (5th) principal meridian; thence south, sixty-five (65) degrees east, three hundred and sixteen (316) feet, nine (9) inches to a point on the northwest boundary line of said paper mill lot; thence north, twenty-five (25) degrees east, seventy-six (76) feet to an iron pin, the north corner of said lot; thence south, twenty-five (25) degrees west, one hundred and forty (140) feet to an iron pin; thence south, sixty-five (65) degrees east, two hundred and fifty (250) feet to an iron pin; thence north, twenty-five (25) degrees east, one hundred and forty (140) feet to an iron grate bar; thence north, sixty-five (65) degrees west, two hundred and fifty (250) feet to the place of beginning; and being in the southwest quarter (S. W. $\frac{1}{4}$) of fractional section nine (9), township fifty-three (53) north, range one (1) east of the fifth (5th) principal meridian.

Also the following real estate in Lancaster county, Nebraska, to wit:

Lots thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17) and eighteen (18) in block three (3), all of block four (4) and all of block five (5), all of the above-described property being within the First addition to Hyde park in the city of Lincoln, in said county and located in the northeast quarter ($\frac{1}{4}$) of section two (2), township nine (9) north, range six (6) east of the sixth principal meridian.

Also the following-described real estate in Greene county, Ohio, to wit:

Lots thirteen (13), fourteen (14) and seventeen (17) in Beall and Perkins' addition to the city of Xenia, as said lots are designated and known on the recorded plat of said addition; said lot seventeen being particularly described as follows, to wit: Beginning
75 at a stake in the west line of Mill street, at the northeast corner of said lot and southeast corner of lot eighteen (18) of said addition; thence running south, $78^{\circ} 50'$ west, with the south line of said lot eighteen (18), crossing Shawnee run six hundred and twenty-eight (628) feet to a stake in the line of M. D. Gatch; thence south, $12\frac{1}{2}^{\circ}$ west, with the westerly line of said lot seventeen (17), one hundred and eighty-four (184) feet, crossing said stream to a stake at the southwest corner of said last-named lot; thence north, $78^{\circ} 50'$ east, with the south line of said lot seventeen (17), seven hundred (700) feet, to a stake in the southeast corner of said lot, northeast corner of lot sixteen (16) in the west line of Mill street; thence north, $11^{\circ} 10'$ east, one hundred and seventy-four (174) feet with the line of said street, to the place of beginning, containing two and three-quarters ($2\frac{3}{4}$) acres of land, more or less.

Also, all that part of lot eighteen (18) in said addition, described as follows, to wit:

Beginning at a point in the west line of West or Mill street corner to lands now owned by said paper company on which is situate its paper mill, and lands now or formerly owned by Amanda Hawes, and running thence west or nearly west along the dividing line of said two tracts of land owned, respectively, by Amanda

Hawes and said paper company, one hundred and seventy (170) feet to a stone; thence north twenty-seven (27) feet to a stone; thence in a northeasterly direction to the southwest corner of a stone wall, one hundred and forty-five (145) feet; thence along the southerly face or edge of said stone wall, in a southeasterly direction, thirty-four (34) feet ten (10) inches to the west line of West street; thence south along the west line of said street, thirty-eight (38) feet, to the place of beginning; reserving and excepting to one Amanda Hawes, and to her heirs and assigns, forever, a right of way twelve (12) feet in width along the south side of the tract herein conveyed, from said West street back one hundred and seventy (170) feet to lands in the rear of the tract herein conveyed, owned by Amanda Hawes, which right of way may be closed by gates or bars but not in such way as to prevent reasonably full access to said lands of said Hawes for vehicles, animals and persons to any extent necessary and proper for the reasonable use and enjoyment of said lands of said Hawes for any lawful purpose; and said paper company grants herein the right which it was heretofore granted, of maintaining and keeping in good order and repair, water pipes (now laid) to convey water to said paper mill from the branch or stream of water crossing said West street at the eastern end of the tract of land

herein conveyed, and for this purpose said grantee is to have
 76 the right to go upon the lands of said Amanda Hawes and James E. Hawes, or either of them, and make such excavations as may be necessary for repairing, examining or replacing said pipes, doing no unnecessary damage to the land.

Also all that part of lot fifteen (15) in said addition, described as follows, to wit:

Beginning at a point twenty-five (25) feet north of a honey-locust tree in the line between lands owned by said paper company and said Amanda Hawes and corner to lands owned by Amanda Hawes and Morris Breen, and running thence north along said line about two hundred and thirty (230) feet to a stone, corner to lands owned by said paper company and said James E. Hawes; thence east about one hundred and fifty-four (154) feet to the northwest corner of a stable; thence south about two hundred and thirty (230) feet to a stone corner to lands owned by said Amanda Hawes and lots of land owned, respectively, by John Gibney, Morris Breen and David Dice; thence west about one hundred and fifty-four (154) feet, along the dividing line between lands owned by said Amanda Hawes and two or three lots of land owned by Morris Breen and others to the place of beginning; excepting and reserving unto Amanda and James E. Hawes for themselves, their heirs and assigns, forever, a right of way twelve (12) feet wide along the entire east front or side of the tract hereby conveyed, to be used by said Amanda Hawes and J. E. Hawes and their heirs and assigns forever, for the free and unobstructed passage of vehicles, animals and persons, and for the purpose of storing stable manure from any stable or stables now or hereafter erected on lands owned by either the said Amanda or J. E. Hawes, lying to the east of those herein conveyed.

Also the following-described lands, to wit :

Beginning at a stone in the west line of the right of way of the Western division of the Pittsburgh, Cincinnati & St. Louis Railway Company, one hundred and twenty-three (123) feet south of the north face of the west end of the south abutment at Shawnee run, which abutment is immediately west of lot No. 17. of Beall and Perkins' addition to said city; thence in a direct line a little south of west about ninety-four (94) feet to a stone in the east line of the right of way of the Toledo, Cincinnati & St. Louis Railway Company, about one hundred and forty-two (142) feet northeast of the east end of the cattle pass under said railroad, in the premises of said Gatch; thence with said line northeasterly to a point on said premises of said Gatch where the same intersects said western boundary line of said Pittsburgh, Cincinnati & St. Louis Railway Company; thence southwardly with said last-named line to the place of beginning.

Also the following tract or parcel of land also situate in said city and bounded and described as follows, viz: Beginning at a point in the north line of said paper company at said Shawnee run, near said bridge where said line intersects the eastern boundary line of said right of way of said Pittsburgh, Cincinnati & St. Louis Railway Company, and running thence easterly with said line of said paper company to the western boundary line of the land or lots of James E. Hawes, which land or lots are in said Beall and Perkins' addition to said city of Xenia; thence northerly with said line to the land or lots of the devisees of David Medsker and A. Medsker, and also situate in or adjoining said addition; thence northerly with the western boundary line of said land or lots of said devisees and A. Medsker northerly to the southern boundary line of the lands of Brice Knox, adjacent thereto; thence with said line in a westerly direction to said eastern boundary line of said right of way of said Pittsburgh, Cincinnati and St. Louis Railway Company; thence in a southerly direction with said last-named line to the place of beginning.

Also any and all privileges and rights of way under said bridge between said tracts of land, whatever they may be, that the said paper company has by virtue of the deed of Louis H. Beall to the Dayton, Xenia and Belpre Railroad Company, reserving rights of way to said Beall under said bridge; the said paper company hereby conveying in said two tracts only what was owned by Moses D. Gatch, east of and immediately contiguous to said Pittsburgh and Cincinnati railroad's said right of way on said east side of said right of way.

Also the following-described premises, situated in the county of Defiance, and State of Ohio, and known as five (5) acres of ground in the southeast quarter of section No. twenty-seven (27), in township No. four (4) north, range No. four (4) east, in the county of Defiance, in the State of Ohio, bounded as follows:

Commencing at a point in the center of the Wabash and Erie canal, now the Miami and Erie canal, at the head of lock No. six (6), being the sixth lock southwesterly from the intersection of said

canal with the Maumee river, in the city of Defiance; thence running southwesterly along the center of said canal twenty-six (26) rods; thence at right angles northwesterly thirty and twenty twenty-sixths ($30\frac{2}{3}\frac{0}{8}$) rods; thence at right angles northeasterly twenty-six (26) rods; thence at right angles southeasterly thirty and twenty twenty-sixths ($30\frac{2}{3}\frac{0}{8}$) rods to the place of beginning; subject to the rights of the State of Ohio to one and one-half ($1\frac{1}{2}$) acres of the said land lying in the bed of said canal and adjacent thereto, for canal and other purposes.

Also the following-described premises in the city of Newark, county of Licking, and State of Ohio, to wit:

Part of outlot sixteen (16), southwest of said city of Newark, according to the numbering of outlots in the partition of 1817, and according to the renumbering of lots, a part of outlot seventy-four (74), bounded and described as follows:

Beginning at the southwest corner of outlot eleven (11) and thence running northwardly along the west line of said outlot eleven (11) sixteen and sixteen one-hundredths (16.16) rods; thence south sixty-six (66) degrees west to the east line of lot seven (7); thence south along the east line of said lot seven (7) to a stake in the Central Ohio Railroad track; thence north sixty-six (66) degrees east, to the place of beginning, containing three and three one-hundredths (3.03) acres, more or less, excepting about one acre of said land lying east of Raccoon creek, which was sold to the Central Ohio Railroad Company; the land described being the same land conveyed to the city of Newark by George Braunhold and wife by deed dated December 22, 1881, and recorded in volume 120 of Deeds, on pages 180 and 181 in the recorder's office of said Licking county, and also except a strip of ground one hundred (100) feet wide off the east side of said lot sixteen (16), described as follows: Beginning on the west line of original outlot eleven (11) southwest of the town of Newark, on Wilson street; thence westerly with said street one hundred (100) feet; thence southerly parallel with the west line of said outlot eleven (11) to the south line of the parcel first above described; thence easterly with said south line one hundred (100) feet to the southwest corner of said lot eleven (11); thence with said west line of said outlot eleven (11) sixteen and sixty-six one-hundredths (16.66) rods to the place of beginning.

Also, the following-described lands in fractional section seventeen (17), township ten (10), range nine (9), in city of Massillon, Stark county, Ohio, described as follows, to wit:

Beginning at a stone set at the southeast corner of Canal street in said city and running thence south seventy and one-half ($70\frac{1}{2}$) degrees west, one (1) chain to its southwest corner; thence along the west line of Canal street north, nineteen and one-half ($19\frac{1}{2}$) degrees west, five (5) chains eighty and three-tenths (80.3) links, to a point in the middle line of Walnut street; thence along the middle line of Walnut street south, seventy-seven (77) degrees west, one (1) chain eighty-seven and eight-tenths (87.8) links; thence still in the middle line of the street south, sixty-eight (68) degrees thirty-five (35) minutes west, one (1) chain seventy-six and

five-tenths (76.5) links; thence south, thirty-three (33) degrees forty-five (45) minutes east, seven (7) chains eighty-one and nine-tenths (81.9) links; thence south nineteen (19) degrees fifteen (15) minutes east, five (5) chains eighty-one and nine-tenths (81.9) links; thence south, twenty-three (23) degrees twenty-five (25) minutes east, four (4) chains and three (3) links; thence south, thirty (30) degrees east, three (3) chains eighteen and eight-tenths (18.8) links; thence south, twenty (20) degrees twenty (20) minutes east, one (1) chain eighty-six and three-tenths (86.3) links; thence south, twelve (12) degrees fifty (50) minutes east, one (1) chain sixty-eight and nine-tenths (68.9) links; thence south, five (5) degrees east, two (2) chains nine and one-tenth (9.1) links; thence south, sixteen (16) degrees fifteen (15) minutes west, one (1) chain seventy-seven and five-tenths (77.5) links; thence north, seventy-one (71) degrees forty-five (45) minutes east, three (3) chains to the west line of the towing path of the Ohio canal; thence along the west line of said towing path north, eleven (11) degrees thirty-five (35) minutes west, four (4) chains thirty-one and five-tenths (31.5) links; thence along the west line of the tow-path north, nineteen (19) degrees thirty (30) minutes west, seventeen (17) chains thirty and three-tenths (30.3) links to the place of beginning, containing seven and thirty-three one-hundredths (7.33) acres of land, more or less; and all water and power rights and privileges belonging or appurtenant to or connected with said lands.

Also, the following-described land in Coshocton county, Ohio, to wit:

Commencing at the northeast corner of lot thirty-six (36) in the incorporated village of Coshocton in said county; thence west with the north line of said lot thirty-six (36) and lot thirty-seven (37), twenty (20) rods and twelve (12) feet to a post in the fence running north on John Gamble's outlot; thence north parallel with Fifth street in said village to the Tuscarawas river; thence up the river with the meanders thereof to where it intersects a line prolonged northwardly from the west side of said Fifth street; thence south along said prolonged line to the place of beginning, containing one (1) acre and sixteen (16) rods, more or less.

80 Also the following-described real estate in Erie county, Ohio:

That part of outlot number forty-nine (49), in the city of Sandusky, Erie county, Ohio, situated west of the line of Jackson street prolonged in a southerly direction from its point of intersection with Monroe street, described as follows, to wit:

Commencing at the point of intersection of the east line of Shelby street with the southerly line of the right of way of the Lake Erie & Western Railway Company, and running thence easterly along said right of way one hundred sixty-eight and seventy-five one-hundredths (168.75) feet to the northwesterly corner of McKelvey and Huntington's addition to the city of Sandusky; thence southerly on a line parallel with the eastern and western boundary lines of said lot, three hundred thirty-seven and seventy-five one-hundredths (337.75) feet to the northerly line of Pierce street; thence westerly, along said northerly line of Pierce street, one hundred

sixty-eight and seventy-five one-hundredths (168.75) feet, to the easterly line of Shelby street, and thence in a northerly direction, along said last-named line, three hundred thirty-seven and seventy-five one-hundredths (337.75) feet, to the place of beginning; being a strip of ground three hundred thirty-seven and seventy-five one-hundredths (337.75) feet by one hundred sixty-eight and seventy-five one-hundredths (168.75) feet between Pierce street on the south, Shelby street on the west, the right of way of the Lake Erie and Western Railway Company on the north and McKelvey and Huntington's addition on the east.

Also the following-described land in Tuscarawas county, Ohio, to wit:

Outlot numbered thirty-five (35) in Blakesfield, as distinguished on the recorded plat thereof, containing two and ninety one-hundredths (2.90) acres.

Also the following-described real estate, situated in the county of Walworth and State of Wisconsin, to wit:

A part of the southwest quarter (S. W. $\frac{1}{4}$) of the southeast quarter (S. E. $\frac{1}{4}$) of section four (4), township four (4) north, range fifteen (15) east, bounded as follows:

Beginning on the west line of lot six (6), in block five (5), in Tripp's Second addition to the village of Whitewater, as numbered and platted on W. W. Card's map of said village, and running thence west, parallel with Clay street, eight (8) chains and ninety-five (95) links, to Wisconsin street; thence south, twenty-six

81 (26) degrees west, along the center of Wisconsin street two (2) chains, twenty-eight (28) links, to the south side of the bridge across the east branch of the Whitewater creek; thence south, fifty-four (54) degrees twenty-five (25) minutes east, twelve (12) chains thirty-seven (37) links, to a stake near the south side of the pond, and from a white-oak tree three (3) feet in diameter north, sixty (60) degrees west, eighteen (18) links; thence north eight (8) chains, twenty-two (22) links, to the place of beginning, which is twelve (12) rods from the northwest corner of said lot six (6).

Also lots eight (8) to fourteen (14), both inclusive, of block eleven (11), in Tripp's said Second addition, as numbered on the plat of said addition, recorded November 12, 1861, and the right to flow any and all lands which John M. Crombie had the right to flow by the dam situate upon said premises.

Subject to the right of William Birge's assigns to flow the premises below the dam, as specified in said Birge's deed.

SCHEDULE B.

Referred to in and made a part of the foregoing mortgage deed of trust.

Leasehold Properties.

All leasehold interest and estate, and all right, title and interest of any kind, which said company now has or may hereafter acquire, in or to lots two (2) and three (3), in block thirty-seven (37) in North Joliet, in Will county, Illinois, together with all improvements thereon, and in or to any and all leases and agreements or renewals thereof, covering or relating to said lots or the improvements thereon, or any power connected therewith—(connected with a freehold. See "A").

Also, all the leasehold interest and estate which said company now has or may hereafter acquire in and to the following-described lands and power, in Cass county, Indiana, to wit :

The land lying between the mill-race mentioned in a certain lease made by Phoebe A. Hamilton and Andrew H., her husband, to Charles A. Clark, Robert R. Clark and Lucius Clark, composing the Logansport Paper Company, dated June 18, 1883, and recorded December 12, 1883, in Mortgage Record Number Four (4) of Cass county, Indiana, at pp. 184-196, and the Wabash river, and included within the following metes and bounds, to wit :

82 Commencing forty-nine and one-half ($49\frac{1}{2}$) feet north of the center line of said mill-race, at a point sixty (60) feet distant from and east of station number seventy-six (76) plus thirty (30) of the location of said mill-race ; thence running eastwardly, parallel with said race, one hundred (100) feet ; thence north one hundred and forty-six (146) feet, more or less, to the south bank of the Wabash river ; thence westwardly along the south bank of said river, parallel with said race, one hundred (100) feet to the east line of the land leased to Marcellus H. Nash ; thence south along the east line of the land leased to Marcellus H. Nash one hundred twenty-two and one-half ($122\frac{1}{2}$) feet to the place of beginning ; also two thousand (2,000) cubic feet of water power per minute from the mill-race in said lease mentioned. And all right, title and interest of any kind which said company now has or may hereafter acquire in or to said premises, or any improvements now or hereafter thereon.

Also all the right, title and interest which said Columbia Straw Paper Company now has or hereafter may acquire in and to that portion of the levee in the city of Lawrence, in Douglas county, Kansas, lying south of the land of the Atchison, Topeka & Santa Fe Railroad Company, so called, between New Hampshire and Rhode Island streets, except that portion reserved for a street by said city, together with one hundred (100) horse power, or so much thereof as may be necessary to furnish all the power for operating a straw-paper mill of four (4) tons daily capacity. Also any and all leases and agreements of any kind, and all right, title and interest

therein or thereto, which said company now has or hereafter may acquire, or enter into covering or relating to above-described land and power, or any part thereof, reference being had particularly to a certain lease and agreement, running from the Kausas Water Power Company and J. D. Bowersock to Lyman G. Gardner, Hiram K. Edwards, Henry Higby or Higley and J. D. Bowersock, dated September nineteenth, 1881, and recorded in the office of the register of deeds of said Douglas county, January fifth, 1882, in Book 25 of Deeds, pages 526 to 530 and to two unrecorded agreements between said J. D. Bowersock and the Lawrence Paper Company, dated respectively January first, 1887, and September fifteenth, 1892, but meaning and intending to cover and include any further or other leases or agreements of any kind now owned or hereafter acquired.

Also all the right, title and interest which the said Columbia Straw Paper Company now has or hereafter may acquire in or to the following-described land situated at Enon Station, Mad River P. O., in the township of Mad River, in the county of Clark, and State of

Ohio, and being part of the southeast quarter (¼) of section 83 two (2), township three (3), range nine (9) M. Rs., described as follows, to wit:

Beginning at a stone monument in the center of the Enon road, which monument is twenty-five (25) feet distant from the center of what was formerly the A. & G. W. Railway Company's main track; thence south, fifty-four (54) degrees west, thirty-three and seventy-five one-hundredths (33.75) poles to a stone monument; said monument is thirty (30) feet from the center of said main track on a due south course; thence north four and seventy-two one-hundredths (4.72) poles to the south wall of the tail-race, six and sixty one-hundredths (6.60) poles to the north wall of the tail-race and fifty-one and fifty one-hundredths (51.50) poles to the south bank of the levee on the south bank of Mad river; thence with said levee north, eighty-eight (88) degrees east, fourteen (14) poles to a stake; thence north, seventy (70) degrees east, nineteen (19) poles to the center of the Enon road; thence south, two and one-fourth (2¼) degrees west, with the center of said road twenty-one (21) poles to the north bank of the head race; twenty-two and one-half (22½) poles to the south bank of the head race, and forty-four (44) poles to the place of beginning, containing seven and ninety-five one-hundredths (7.95) acres, more or less; also any and all leases and agreements of any kind, and all right, title and interest therein or thereto which said Columbia Straw Paper Company now has, or hereafter may acquire or enter into, covering or relating to above-described land and the water power used thereon or in connection therewith, reference being had particularly to a certain lease and agreement running from Henry Snyder to the Hastings Paper Company, dated March 10, 1890, for a term of four years from the first day of January, 1891, and duly recorded in the records of said Clark county, Ohio.

Also all the leasehold interest and estate and all right, title and interest of any kind which said company now has, or may hereafter acquire, in or to the west one hundred and twenty-three (123) feet

of lot 2294, and in or to lot 2301, of the consecutive numbers on the plat of the city of Dayton, in Montgomery county, Ohio, together with the rights and privileges conferred upon Thomas McGregor, David McGregor and George Harris, by lease to them from the Dayton Hydraulic Company, dated April 10, 1854, and recorded in Book W 2 of the deed records of said Montgomery county.

The foregoing schedules, "A" and "B," covering pages 45 to 77, both inclusive, are the Schedules "A" and "B," referred to and made a part of the mortgage trust deed from the Columbia 84 Straw Paper Company to the Northern Trust Company and Ovid B. Jameson, dated December 31, 1892, and to which said deed said schedules are annexed as such part thereof.

In witness whereof, the Columbia Straw Paper Company hath caused its official seal to be hereto affixed, and its corporate name to be hereto subscribed by its president the 31st day of December, 1892.

[Seal Columbia Straw Paper Company.]

COLUMBIA STRAW PAPER COMPANY,
By PHILO D. BEARD, *President*.

Witnesses:

NOBLE B. JUDAH.
HENRY M. WOLF.
HENRY M. YOUNG.

STATE OF ILLINOIS, }
County of Cook, } ss:

Be it remembered, that on this twenty-eighth day of February, in the year one thousand eight hundred and ninety-three, before me, John D. Hood, a notary public in and for said county, in the State aforesaid, personally appeared Philo D. Beard, to me personally known, and known to me to be the identical individual whose name is subscribed to the foregoing Schedules "A" and "B" as the president of the Columbia Straw Paper Company, and who subscribed the name of said company to said schedules, who, being duly sworn, did depose and say: That he is the president of the Columbia Straw Paper Company, the corporation described in and which subscribed the said schedules; that he resides in the city of Buffalo, in the State of New York; that the seal affixed thereto is the corporate seal of the said company, and was duly thereto affixed by resolution of its board of directors, and that by like resolution and authority he signed the name of the said corporation and his own as president thereto of said corporation; and, I having first made known the contents thereof to him, he acknowledged the execution of the same to be the free and voluntary act and deed of the said Columbia Straw Paper Company for the uses and purposes therein mentioned.

85 In testimony whereof, I have hereunto subscribed my name and affixed my official seal this twenty-eighth (28th) day of February, 1893.

[Seal of John D. Hood, Notary Public.]

JOHN D. HOOD,
Notary Public.

STATE OF OHIO, {
Licking Co. }

Received for record M'ch 20, 1893, at 8.00 o'clock a. m. Recorded in Mtg. Book 71, page 92, &c.

J. H. MOORE, *Recorder.*

STATE OF ILLINOIS, {
Kane County, } ss:

No. 2204.

This instrument was filed for record the 8th day of March, 1893, at 11 o'clock a. m., and duly recorded in Book 319 of —, page 109.

JOS. INGHAM, *Recorder.*

(Endorsed :) Filed January 24, 1895. S. W. Burnham, clerk.

On the same day, to wit, the twenty-fourth day of January, 1895, a writ of subpœna issued out of the clerk's office directed against the defendant in said entitled cause, which said subpœna, together with the memorandum thereto attached and the marshal's return thereon endorsed, is in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA, {
Northern District of Illinois, Northern Division, } ss:

The United States of America to Columbia Straw Paper Company, Greeting:

We command you and every of you, that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in the northern division of said district, on the first Monday in the month of March next, to answer the bill of complaint of the Northern Trust Company and

86 Ovid B. Jameson, this day filed in the clerk's office of said court in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then and thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois, to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago, aforesaid, this 24th day of January, in the year of our Lord one thousand eight hundred and ninety-five, and of our Independence the 119th year.

[SEAL.]

S. W. BURNHAM, *Clerk.*

Memorandum.

The above-named defendant is notified that unless it shall enter its appearance in the clerk's office of said court at Chicago, aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against it as confessed, and a decree entered accordingly.

S. W. BURNHAM, *Clerk.*

Marshal's Return.

Endorsements.

I have served the within writ within my district in the following manner, to wit, upon Columbia Straw Paper Company, therein named, on the 31st day of January, A. D. 1895, by delivering a true copy of the same to E. Stein, treasurer of the aforesaid company.

J. W. ARNOLD,

U. S. Marshal,

By GEO. N. JONES, *Deputy.*

Filed Feb'y 5, 1894.

S. W. BURNHAM, *Clerk.*

87 Afterwards, to wit: on the twenty-second day of March, 1895, came the defendant, The Columbia Straw Paper Company, by its solicitors and filed in the clerk's office of said court its answer to the bill of complaint in said cause, which said answer is in the words and figures following, to wit:

Answer, Columbia Straw Paper Co.

Answer of Columbia Straw Paper Company.

UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division. }

In the Circuit Court of the United States.

NORTHERN TRUST COMPANY and OVID B. JAMESON, Trustees, }
Complainants, }
vs. }
COLUMBIA STRAW PAPER COMPANY, Defendant. }

The answer of said defendant, The Columbia Straw Paper Company, to the bill of complaint.

The Columbia Straw Paper Company, defendant in the above-entitled cause, saving to itself all benefit of exception to the many errors, uncertainties and insufficiencies in said bill of complaint contained, for answer to so much thereof as it is advised is necessary says:

Defendant admits that it executed and issued one thousand (1,000) bonds of one thousand dollars (\$1,000) each, as alleged in said bill

of complaint, of the tenor and effect and containing the provisions substantially as set forth in said bill, and that said bonds were certified by the said Northern Trust Company, complainant, as trustee and that the same have been negotiated, sold and are now valid outstanding obligations of said defendant company, as in said bill set forth.

Defendant further answering, admits the execution of the mortgage or deed of trust, and delivery of the same to said complainants, wherein and whereby it conveyed to said complainants as trustees, the property in said bill set forth, and all property which could be legally subjected to the lien of the mortgage, then owned or thereafter to be acquired, all of which will more fully appear by reference to said mortgage or deed of trust, a copy of which was filed with said bill of complaint.

Defendant admits that part of the property covered by said mortgage or deed of trust, was situated in the northern district of the State of Illinois, as particularly described in said bill of complaint.

Defendant, further answering, admits that by the terms of said mortgage or deed of trust the same should become enforceable upon the happening of certain events substantially as set forth in said bill of complaint, and which will more fully and particularly appear by reference to the said mortgage itself, and that the said defendant company has made default in redeeming or discharging the various series of bonds referred to in paragraphs VI and VII in said bill of complaint, and have likewise made default in the payment of interest on said bonds set forth in paragraph VII, and also admits the entry of a judgment and issuance of execution as in paragraph VIII of said bill alleged.

Defendant neither admits nor denies that said trustees have been requested in writing by the owners and holders of more than one-third of said bonds to enforce the provisions of said trust and to bring this suit, and leaves complainants to make proof thereof. The defendant admits that it is unable at present to pay its just debts and liabilities, but claims that the property covered by said mortgage or deed of trust is worth very largely more than the amount of said bonds and the indebtedness of said company.

Defendant, further answering, admits that the said trustees, prior to the filing of said bill of complaint, took possession of the real and personal property of said defendant company covered by said mortgage, as in said bill alleged, and that said mortgage contained the provision with reference to such taking possession substantially as in said bill alleged.

And now, having answered said bill, the defendant prays to be hence dismissed with its costs.

COLUMBIA STRAW PAPER COMPANY,
By HERRICK, ALLEN & BOYESEN,
Its Solicitors and of Counsel.

(Endorsed :) Filed March 22, 1895. S. W. Burnham, clerk.

89 Afterwards, to wit: on the fourth day of April, 1895, came the Northern Trust Company and Ovid B. Jameson, as trustees, and filed in the clerk's office of said court their replication to the answer of the Columbia Straw Paper Company, which said replication is in the words and figures following, to wit:

Replication.

Replication to answer of Columbia Straw Paper Co.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ss:

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and OVID B.	} In Chancery.
Jameson, as Trustees, Complainants,	
vs.	
COLUMBIA STRAW PAPER COMPANY, Defendant.	

The replication of the Northern Trust Company and Ovid B. Jameson, as trustees, to the answer of the defendant, The Columbia Straw Paper Company.

These repliants, the Northern Trust Company and Ovid B. Jameson, as trustees, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendant, for replication thereunto, say:

That they do and will aver, maintain and prove their said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by these repliants, without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied is true, all which matters and things these repliants are ready to aver, maintain and prove,

90 as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

DUPEE, JUDAH & WILLARD,
Solicitors for Complainants, 185 Dearborn Street, Chicago.

(Endorsed :) Filed April 4, 1895. S. W. Burnham, clerk.

Afterwards, to wit: on the 4th day of May, 1895, there was filed in the clerk's office of said court the affidavit of John B. Sherwood, which said affidavit is in the words and figures following, to wit:

Affidavit of John B. Sherwood.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and OVID B. JAMESON, Trustees, }
vs.
 THE COLUMBIA STRAW PAPER COMPANY. }

John B. Sherwood, being duly sworn, on oath deposes and says that he is the agent for Harry W. Dickerman, and others, parties who have appeared and asked leave to file their petition, praying that they may be made parties defendant hereto, and for leave to answer and file a cross-bill, and as such agent is authorized to make this affidavit, and says that on the 4th day of May, 1895, since 1 o'clock p. m., of this day he was informed by George P. Jones, receiver herein, that said receiver has not collected any of the assets or choses in action of said defendant company; that he has, as receiver, only taken possession of the real estate covered by the mortgage; that said Jones says that he was informed by the counsel for the complainants and defendant that under the terms of the order appointing him as receiver, he could not take possession of any of the property of the defendant, except the real estate; that he was told by said counsel that he could not take possession of the books and papers of the defendant in the city of Chicago when he went to the office of the defendant company in this city to take possession thereof, and that since then the books and papers of the company have been removed from the city of Chicago by the defendant, and that he, the said Jones, does not know where the same now are.

91 Affiant further says that it will be material to the preparation of the cross-bill to be filed in this cause by said Dickerman and his co-stockholders, petitioners herein, that he have access to said books.

Affiant further says that he is informed and believes that the defendant, The Columbia Straw Paper Company, is possessed of personal property, such as moneys and choses in action, of great value, and other personal property which are not in the possession of the receiver, George P. Jones, and which may be sequestered by proceedings now pending in the State of New Jersey, instituted by a bondholder of the defendant company named Solomon Marx; that on Monday next, a court in New Jersey will hear an application to appoint a receiver in the suit instituted by said Marx.

JOHN B. SHERWOOD.

Subscribed and sworn to before me this 4th day of May, A. D. 1895.

[SEAL.]

EDWIN G. LANCASTER,

Notary Public.

(Endorsed :) Filed May 4, 1895. S. W. Burnham, clerk.

Afterwards, to wit: on the thirteenth day of May, 1895, came Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois, Buckstaff Brothers Manufacturing Company, Henry S. Carroll for himself and the Clarksville Paper Company, F. J. Diem, Freeman Graham, Jr., Julius Graham, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, and file their petition to be made parties defendant in said entitled cause, which said petition is in the words and figures following, to wit:

Petition, Dickerman et al.

UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division, } ss:

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and OVID B. Jameson, as Trustees, Complainants,	} In Equity. 23614-832.
vs.	
COLUMBIA STRAW PAPER COMPANY, De- fendant.	

92 The petition of Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois; Buckstaff Brothers Manufacturing Company; Henry S. Carroll, for himself and the Clarksville Paper Company; F. J. Diem, Freeman Graham, Jr., Julius Graham; E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, to be made parties defendant, for leave to answer the original bill herein and file a cross-bill thereto.

The said petitioners, by Otto Gresham and Bluford Wilson, their solicitors, respectfully show to the court as follows:

Your petitioner, Henry W. Dickerman, is a resident of the city of Rockford, in the State of Illinois, and is the trustee for the Second National Bank of Rockford, and in that behalf holds four hundred (400) shares of the preferred, and four hundred (400) shares of the common capital stock of the said defendant company.

Your petitioner, Buckstaff Brothers Manufacturing Company of the City of Lincoln, and State of Nebraska, holds and owns two hundred fifty (250) shares of preferred, and five hundred (500) shares of the common capital stock of the said defendant company.

Your petitioner, Henry S. Carroll, is a resident of the city of Clarksville, in the State of Missouri, and holds individually and as trustee for others, one hundred twenty (120) shares of the preferred, and two hundred forty (240) shares of the common capital stock of the defendant company.

Your petitioner, F. J. Diem, is a resident of the city of Cincinnati, in the State of Ohio, and is the owner and holder of one hundred

and ten (110) shares of the preferred, and two hundred and twenty (220) shares of the common capital stock of the said defendant company.

Your petitioners, Freeman Graham, Jr., and Julius Graham, are residents of the city of Rockford, in the State of Illinois, and are the owners of one hundred and thirty-three (133) shares of the preferred, and six hundred and sixty-seven (667) shares of the common capital stock of said defendant company.

Your petitioner, E. P. Hooker, is a resident of the city of Defiance, in the State of Ohio, and as trustee for the Merchants' national bank of said city, and in his own behalf, is the holder of one hundred and twenty-five (125) shares of the preferred, and two hundred and fifty (250) — of the common capital stock of said defendant company.

93 Your petitioner, James C. Richardson, is a resident of Lockland, in the State of Ohio, and is the owner and holder of one hundred and sixty (160) shares of the preferred, and three hundred (300) shares of the common capital stock of said defendant company.

Your petitioners further show that they did not, as such stockholders participate in the acts hereinafter complained of, and that they are not transferees with knowledge of the stockholders who did participate therein, and that since the acts complained of came to their knowledge they have not, nor have either or any of them, in any way acquiesced therein. Your petitioners file this petition individually, and in behalf of the owners of the said stock, and of all other stockholders who may hereafter contribute to the expense hereof, and choose to join herein.

And thereupon, your petitioners further respectfully show to the court as follows:

Your petitioners respectfully show unto this honorable court that in the summer of 1892, one Emanuel Stein, a resident of the city of Chicago, Illinois, was engaged in the promotion and organization of corporations, and one E. Gilbert Church was the owner of a large paper mill plant situated in the town of Rock Falls, Illinois; that one Philo D. Beard was a banker in the city of Buffalo, New York, and Randolph Guggenheimer, Samuel Untermeyer, Isaac Untermeyer, Moses Weiman and Morris Untermeyer were lawyers in the city of New York, doing business under the firm name of Guggenheimer & Untermeyer, at 46 Wall street, and engaged in the promotion and organization of corporations of large magnitude; that Charles A. Dupee, Noble B. Judah, Munroe L. Willard and Henry M. Wolf were residents of the city of Chicago and were engaged in the practice of law under the firm name of Dupee, Judah & Willard, having their office in the Adams Express building; that Fred. C. Trebein was a resident and owner of a straw-paper mill at Xenia, Ohio; that John B. Halliday was a resident of the city of Chicago, engaged in the business of paper brokerage; that B. M. Freese was a resident of the city of Chicago, and the owner of a paper mill at Whitewater, Wisconsin; that Richard T. Higgins was a resident and the owner of a paper mill at Van Lalia, Illinois; that

Augustus P. Brown was a resident and the owner of a paper mill at Fort Madison, Iowa; and that William C. Heppenheimer was a resident of the city of Hoboken, New Jersey.

Your petitioners further respectfully show unto this honorable court, that during the summer months of 1892, the above-named persons entered into an agreement whereby options or executory contracts for the purchase of certain paper mill plants throughout the country to be obtained if possible, on the basis of the payment of so much cash and the balance in the stock of a corporation to be by them formed of said mills; said options to run for six months and if the same could be obtained at what might be considered by them reasonable values, then a corporation was to be formed by them under the laws of the State of New Jersey, or some other State that might be agreed upon; and that a board of directors being formed out of their number, said properties were to be offered for purchase to said corporation upon the basis of bonds sufficient to cover the cash to be paid for said mills, and a sufficient working capital to be furnished by said parties providing the money; and that all the stock over and above the stock necessary to complete the purchase of said mills was to be distributed among the persons furnishing said money without their paying for the same and as a bonus with said bonds.

Your petitioners further respectfully represent unto this honorable court, that thereupon the said firm of Guggenheimer & Untermeyer prepared in writing a form of option or executory contract of purchase for each mill-owner to execute and deliver, said options providing among other things, that the said Philo D. Beard and one Thomas T. Ramsdell of the said city of Buffalo, should be the vendees therein; and that it was the purpose of said vendees to organize one or more corporations in such State or States of the United States as they might be advised, with a share capital of \$1,000,000 in preferred stock and \$3,000,000 in common stock; and that said options should run until December 31, 1892; and that said options further provided that said vendees might pay for each of said paper mills, so much in cash, so much in preferred stock, and so much in the common stock of such corporation; and the corporation so to be organized should also have the right if so authorized by its charter and the proper resolution of its board of directors to issue \$1,000,000 of six per cent. mortgage bonds.

Your petitioners further respectfully show unto this honorable court that upon the preparing of said options the said parties above named commenced the taking of the same upon said paper mill plants upon the terms mentioned therein and succeeded in securing the same upon about thirty-nine of said paper mill plants all of which are fully named and described in the original bill in this cause.

Your petitioners further respectfully represent unto this honorable court that the total amount of said options or executory contracts of purchase was \$2,788,000, payable as follows: 95 \$766,000 in cash, \$629,000 in preferred stock, \$1,258,000 in

the common stock of said corporation and \$135,000 in the notes of the company so to be organized.

Your petitioners further respectfully represent unto this honorable court that after all of said options of the said mills had been obtained in the name of said Beard and said Ramsdell as aforesaid, said parties met and considered them and thereupon said parties found it would be necessary to provide \$1,000,000 to purchase said property and for the running capital; and that thereupon the said Guggenheimer & Untermeyer submitted to certain of their friends in New York the plan that had been agreed upon by said original promoters heretofore named, and the said friends of Guggenheimer & Untermeyer above referred to appointed the said firm as their agents for the purchase of two hundred and twenty-six bonds of the company at their par value upon a bonus being given to them of three hundred and eighty-eight full-paid shares of preferred stock and seven hundred and seventy-six full-paid shares of the common stock of said company so to be organized; and the said firm of Guggenheimer & Untermeyer also agreed to purchase two hundred and fifty-seven bonds at their par value upon receiving a stock bonus of eight hundred and forty-nine full-paid shares of preferred stock and four thousand three hundred and fifty-seven full-paid shares of the common stock of said company.

Your petitioners further respectfully represent unto this honorable court that at the same time the said Philo D. Beard submitted to certain of his friends the said plan that had been agreed upon by the said original promoters heretofore named, and the said certain friends above referred to appointed said Philo D. Beard their agent for the purchase of the bonds of said company with a stock bonus therewith; and thereupon the said Philo D. Beard upon behalf of himself and the said friends agreed to purchase two hundred and thirty-eight bonds of said company at their par value with a bonus of nine hundred and fifty-seven full-paid shares of preferred stock and four thousand four hundred and forty-one full-paid shares of the common stock of said company.

Your petitioners further respectfully represents unto this honorable court that the said firm of Dupee, Judah & Willard on behalf of themselves and certain of their friends, together with said Stein, agreed to take seventy-seven bonds at their par value, with a bonus of one thousand four hundred and ninety-three full-paid shares of preferred stock and five thousand two hundred and eleven full-paid

96 shares of the common stock of said company; that the said John B. Halliday agreed to purchase twenty-five bonds of said company at their par value with a bonus of three hundred and seventy full-paid shares of preferred stock and eight hundred and twenty-seven full-paid shares of the common stock of said company; that the said F. C. Trebein agreed to purchase thirty bonds of said company with a bonus of sixty full-paid shares of preferred stock and one hundred and twenty full-paid shares of the common stock of said company.

Your petitioners further respectfully represent unto this honorable court that thereupon all of the said parties so agreeing to pur-

chase said bonds as aforesaid, paid the par value of the said bonds, to wit, \$853,000 into the hands of the said Henry M. Wolf as trustee, for the purpose of applying the same at the proper time in the purchase of said mills; that said agreement as to the giving of said shares of stock to the several purchasers of bonds as a bonus was kept a secret from these petitioners and from the owners of mills, who had agreed under their options to sell said mills to said Beard and Ramsdell, prior to the 31st of December, 1892, in the manner and form as aforesaid.

Your petitioners further respectfully represent unto this honorable court, that upon the placing of said sum of money in the hands of the said Henry M. Wolf as trustee, said Beard and Ramsdell assigned, transferred and set over all their interest in and to said options or executory contracts for the purchase of said mills to the said Emanuel Stein, without any consideration therefor, but, as the petitioners are informed and believe, and upon such information and belief charge to be true, for the sole purpose of evading the provisions of the statute concerning corporations in the State of New Jersey, under the laws of which State the parties aforesaid, at the time of said assignment and transfer to said Stein, had agreed upon as the State in which to incorporate the said company.

Your petitioners further respectfully represent unto this honorable court, that upon the said sum of money being placed in the hands of the said Wolf, trustee, the said executory contracts of purchase being transferred to the said Stein, the said Stein, after consultation and agreement with all of the parties heretofore named or referred to as principals and agents, accepted in writing said options in or about the month of November, 1892. And that after the said firm of Dupee, Judah & Willard and the said Wolf examining the titles of said property and advising that the same were satisfactory, said Guggenheimer & Untermyer prepared articles of incorporation for the formation of the Columbia Straw Paper Com-

pany, which is the same corporation as is defendant in the
97 original bill for foreclosure in this cause; and the said articles of incorporation were duly executed by the said Philo D. Beard, William C. Heppenheimer, a resident of the State of New Jersey, and one William C. Taylor, a resident of the town of Utrecht, Kings county, New York; that each of them subscribed for four shares, the said corporation having a share capital of one million dollars of preferred stock, three million dollars of common stock, with the right under section 12 of article 3 of the certificate of incorporation of said Columbia Straw Paper Company "to borrow or raise money for any purpose of the company, securing the same and interest, or for any other purpose to mortgage or charge the undertaking or all or any part of the property present or after acquired," and caused said certificate or articles of incorporation to be filed in the office of the secretary of state of New Jersey on the 6th day of December, 1892.

Your petitioners further respectfully represent unto this honorable court, that immediately upon the filing of said articles of incorporation, said stockholders elected as directors of said company the

following-named persons: Philo D. Beard, Fred. C. Trebein, E. Gilbert Church, J. B. Halliday, B. M. Freese, Richard T. Higgins, Emanuel Stein, Augustus P. Brown and William C. Heppenheimer; that the said persons thus elected directors were the same and identical parties making said original agreement during the summer of 1892 as aforesaid; and thereupon said board of directors met in the office of said Guggenheimer and Untermeyer and elected said Philo D. Beard as president and appointed said Guggenheimer and Untermeyer as attorneys in the city of New York, and the said Dupee, Judah & Willard as attorneys in the city of Chicago for the said company.

Your petitioners further respectfully represent unto this honorable court, that thereupon on or about the 14th day of December, 1892, said Emanuel Stein made a written proposition to the said board of directors to sell and transfer to said company "all the properties, mills, plants, factories, appurtenances, to be acquired by him" under the aforesaid options or executory contracts of purchase, which are the same paper mills described in the original bill for foreclosure herein, for the sum of \$5,000,000, to be paid by said company as follows: \$1,800 in cash; \$1,000,000 in first-mortgage gold bonds of the company, and which are the same identical bonds and mortgages set out in said original bill of foreclosure herein; \$1,000,000 in full-paid shares of the preferred stock of said company; and \$2,998,200 in full-paid shares of the common stock of said company.

98 Your petitioners further respectfully represent unto this honorable court, that at the time of the offer of said Stein as aforesaid, each and every of the said directors knew that the stock asked for by the said Stein as purchase-money exceeded in amount the value of the property in exchange for which said Stein asked that it should be issued; and that each and every one of the said directors had full knowledge of the real value of the said properties offered by the said Stein, but disregarding their duties as directors of said company towards these petitioners, who were about to become stockholders under said options or executory contracts of purchase, and without the knowledge of these petitioners or any of the stockholders named in said options, deliberately and fraudulently overvalued said property and purchased the same from said Stein and paid him therefor \$1,800 in cash, and issued to him \$1,000,000 in said gold first-mortgage bonds of said company, and \$1,000,000 in full-paid shares of the preferred stock and \$2,998,200 in full-paid shares of the common stock of said company.

Your petitioners further respectfully represent unto this honorable court, that each and every one of the said directors knew at the time of said purchase of said property by them, acting as a board of directors, that the surplus of said stock said company so issued to said Stein over and above the amount to be issued to the owners of said paper mill plants, to wit, \$1,887,000, which surplus amounted to \$2,113,000, was to be divided by said Stein with the said Guggenheimer & Untermeyer and the said Dupee, Judah & Willard, and the other said persons above referred to, who had agreed to take

the bonds of said company through the said Guggenheimer & Untermeyer and Philo D. Beard, acting as their agents in the purchase of said bonds and in obtaining said stock as a gratuity.

Your petitioners further respectfully represent unto this honorable court, that the said board of directors at the time of the purchase of said paper mill plants for said Stein, each and every one of them, knew and had full information of the original agreement for the taking of options from said mill-owners, the terms of said options, the amount of each and every option, the transfer and assignment of the same from the said Beard and Ramsdell to the said Stein; and knew that there was no consideration whatever for said assignment and transfer, and knew that said moneys necessary for the cash purchase of the said paper mill plants and for the running capital of the corporation formed were placed in the hands of said Wolf as trustee, and knew that said Stein accepted said options after consultation with them, at their request, and knew that said articles of

99 incorporation were so drawn by said Guggenheimer & Untermeyer in order that said original plan agreed upon by the parties as aforesaid during the summer of 1892, might be fully carried out; and knew that each and every one of the said directors were elected for the purpose of effecting and accepting said proposition of said Stein for the sale of said paper mill plants; and knew that the said \$5,000,000 was an overvaluation of said property so to be purchased, and knew that said properties were not worth to exceed at their fair value the aggregate amount of the thirty-nine options secured on the same; and knew that the purpose of the plan was to evade the force of the statute of the State of New Jersey requiring the capital stock of manufacturing corporations to be paid in cash in its par value or in property at its fair value; and knew that the terms of said purchase were to be kept secret from each and every of the owners of said mill plants who had agreed in their options to take stock at its par value for their several mill plants including these petitioners; and knew that the fact that the surplus of said stock being distributed among said several directors and their friends and associates, as aforesaid, was to be kept secret from each and every of the said owners of said paper mill plants so purchased, including each and every of these petitioners.

Your petitioners further respectfully represent unto this honorable court that they are informed and believe and therefore charge the same to be true, that the said Philo D. Beard and his associates in the city of Buffalo and vicinity above referred to, received from the said Stein through the said Wolf, acting as trustee for all, in pursuance to said agreement, two hundred and thirty-eight of said bonds so issued by said Columbia Straw Paper Company, and also received without consideration therefor nine hundred and fifty-seven full-paid shares of the preferred stock and four thousand four hundred and forty-one full-paid shares of the common stock of said company; that the said Beard and the said associates are still the owners of said bonds and stock, and that the said stock has not been paid for in any manner, though there is claimed by the Northern Trust Company and Ovid B. Jameson, trustees, in the original bill

of foreclosure to be due the said Beard and his said associates the sum of \$238,000, yet in fact said Beard and his associates now owe and are indebted to said Columbia Straw Paper Company in the sum of \$95,700 for the said shares of preferred stock and \$444,100 for said shares of the common stock of said company.

Your petitioners further respectfully represent unto this honorable court that they are informed and believe, and the reforecharge the same to be true, that the said Guggenheimer & Unter-
100 meyer and their associates in the city of New York and the vicinity above referred to, received from said Stein through said Wolf, as trustee for all, in pursuance to said agreement, four hundred and eighty-three of said bonds so issued by said Columbia Straw Paper Company, and also received without consideration therefor one thousand two hundred and sixty-nine full-paid shares of the preferred stock and five thousand one hundred and ninety-eight full-paid shares of the common stock of said company; that said Guggenheimer & Untermyer and their associates are still the owners and holders of said bonds and stock, and that said stock has not been paid for in any manner, and that although there is claimed by the Northern Trust Company and the said Jameson trustees, in the original bill of foreclosure to be due to the said Guggenheimer & Untermyer and their said associates the sum of \$183,000, yet in fact the said Guggenheimer & Untermyer and their associates now owe and are indebted to the said Columbia Straw Paper Company in the sum of \$126,900 for the preferred stock and \$519,800 for the common stock of said company.

Your petitioners further respectfully represent unto this honorable court, that they are informed and believe, and therefore charge the same to be true, that the said Dupee, Judah, Willard and Wolf, and their associates in Chicago, above referred to, receive from the said Stein through the said Wolf, as trustee for all, and in pursuance to the said agreement, seventy-seven of said bonds so issued by the said Columbia Straw Paper Company, and also received without consideration therefor one thousand four hundred and ninety-three full-paid shares of the preferred stock, and five thousand two hundred and eleven full-paid shares of the common stock of said company; and that the last-named parties are still the owners and holders of said bonds and stock; and that said stock has not been paid for in any manner, and that although there is claimed by the Northern Trust Company and said Jameson, as trustees in the original bill of foreclosure, to be due to the said Dupee, Judah & Willard and associates, the sum of \$77,000, yet in fact said last-named parties now owe and are indebted to the said Columbia Straw Paper Company in the sum of \$149,300 for the preferred and \$521,100 for the said common stock of said company.

Your petitioners further respectfully represent unto this honorable court that after the issue of said bonds as aforesaid the said parties above mentioned furnished the money for the cash required for the purchase of said mills under said options and for the running cap-

101 ital of said company, and after said directors had wrongfully, fraudulently and in the breach of their trust to these petitioners issued the said three thousand eight hundred and fifteen full-paid shares of preferred stock and fifteen thousand and forty-two full-paid shares of the common stock of said company to said parties so purchasing said bonds as a gift or bonus and without receiving any consideration therefor in the manner aforesaid, the above-named Philo D. Bearé, as president of the said company, in pursuance of the statute of the said State of New Jersey, on the 17th day of May, 1893, caused to be filed with the secretary of state a certificate verified by him under oath, in which he stated, "That the sum of \$4,000,000, the amount fixed in the original certificate of incorporation of said company, as its total authorized capital stock, \$3,000,000 thereof being divided into thirty thousand shares of common stock, each of the par value of \$100, and one million dollars being divided into ten thousand shares of preferred stock of the par value of \$100 each capitalized, had been fully paid in; \$1,800 thereof in cash and \$3,998,200 thereof by the purchase of property capitalized at the fair value thereof." But these petitioners aver that except said amount of stock required to pay for said options as aforesaid the balance of said stock was not paid for in any manner, but was given away by said directors to themselves and their associates in the manner and form aforesaid.

Your petitioners further respectfully represent unto this honorable court that it was represented to various of these petitioners by the agents of the promoters herein referred to, that there were west of the Alleghany mountains about seventy-three mills for the manufacturing of straw wrapping paper; and that they all could be put under one ownership at a capitalization of about \$5,000,000 which was determined upon; that it was proposed to issue \$1,000,000 of first-mortgage bonds, \$1,000,000 of preferred stock in shares at \$100 each, dividends to be paid thereon at the rate of 2 per cent. quarterly, and \$3,000,000 in common stock at \$100 per share; that it was further represented that for the above capitalization all the mills, to wit: about seventy-three in number, west of the Alleghany mountains, could or would be acquired and that it was part of the plan of the organization of the Columbia Straw Paper Company to so acquire them and the said capitalization was made in reference thereto; but notwithstanding that the ownership of only thirty-nine mills was acquired yet the whole amount of the above-named security has been issued. Your petitioners further respectfully represent unto this honorable court, that if the remaining thirty-three mills had been acquired as it had been represented they would be, the success of the venture would have been assured, and also
102 that upon the failure of the managers to acquire the said remaining thirty-three mills it became their duty to keep the surplus bonds and common and preferred stock in the treasury of the company as assets of the said Columbia Straw Paper Company.

Your petitioners further respectfully represent unto this honorable court that at the present time the exact amount of bonds that

each and every of the said above-named persons hold, and shares of capital stock as aforesaid, received as a bonus, is unknown to them and each of them, but that on the hearing of this cause they will be able to prove the exact amount of bonds and shares of stock that each of said bondholders received, but they aver that the above amounts in the aggregate are correct, as they are informed and believe, and upon such information and belief, charge to be true and correct.

Your petitioners further respectfully represent unto this honorable court that by reason of the issue to said Beard, Trebein, Church, Halliday, Freese, Higgins, Stein, Brown, Guggenheimer, Untermeyer, Dupee, Judah, Willard and Wolf, of said full-paid shares of common stock of said company, which these petitioners aver under the articles of incorporation was the only voting stock of said company, said last-named persons held the controlling interests in said company, at the time of the acts hereinabove set forth and were enabled to elect said above-named board of directors and at the annual meeting of stockholders in December, 1893, did elect the above-named Beard, Trebein, Church, Halladay, Freeze, Higgins, Stein, Brown and Heppenheimer, as the board of directors of said company and that they are still acting as such, and as such are acting for and on behalf of their own interests and in a manner destructive to the corporation itself, in this, to wit:

As your petitioners are informed and believe and therefore charge the same to be true that as holders of said bonds, to wit: eight hundred and forty-six bonds they caused the Northern Trust Company and Ovid B. Jameson, the trustees, under the said mortgage to institute the present suit for foreclosure in this cause and have employed the said firm of Dupee, Judah & Willard to act as counsel for the complainant, trustees, and have further employed the firm of Herrick, Allen & Boyesen to act as solicitors on behalf of said defendant company, The Columbia Straw Paper Company, and concealing from said last-named solicitors the facts as above set out, have induced and caused them to file the answer of the said Columbia Straw Paper Company, which is now on file in this cause, in which all of the averments of the bill of foreclosure

of said mortgage are admitted to be true, saving and excepting only the fact as to whether a sufficient number of bondholders have instructed and authorized said trustees to institute said suit, which fact they neither admit nor deny; which fraudulent transaction by the acting managers and other shareholders will result in the serious injury of the said corporation, the Columbia Straw Paper Company, and the interests of other shareholders including these petitioners; and by which transaction the acting managers are oppressively and illegally pursuing a course in the name of the corporation, the Columbia Straw Paper Company, which is in violation of the rights of shareholders, including these petitioners.

Your petitioners further respectfully represent unto this honorable court that by reason of the attitude of each and every of the said board of directors above named toward said defendant, The Colum-

bia Straw Paper Company, and its stockholders other than said board of directors and said Guggenheimer & Untermeyer, Dupee, Judah & Willard and Wolf, and their said associates and confederates heretofore referred to, the said last-named parties holding a majority of the common stock of said company; and because of the corporate management of said company being under the control of said parties last named, the said board of directors are not fitted to conduct this suit, by reason of their adverse interests, and by reason of the fact that the proper direction and management and assertion of the equities herein would cause almost a total destruction of the personal interests and properties herein of said board of directors, and of each and every of said directors.

Whereof, and by reason of the premises, and to the end that the interests of yours petitioners at least may be safely guarded and protected, and their equities herein asserted and prosecuted, these petitioners humbly pray that an order may be entered herein making them parties defendant to the original bill herein filed by the Northern Trust Company and Ovid B. Jameson, trustees, and that they may be permitted to plead, answer or demur to said bill as they may be advised it is proper and necessary that they should do in order that their rights may be fully and fairly presented and determined; and further granting unto them the permission to file herein a cross bill more fully setting forth the facts pursuant to the practice of this court, and praying affirmative relief; and that your petitioners may have such other and further relief in the premises as equity may require and to your honor shall seem meet; and your petitioners will ever pray, etc.

104

HARRY W. DICKERMAN,
Trustee 2d National Bank of Rockford, Ills.,
 BUCKSTAFF BROS. MFG. CO.,
 HENRY S. CARROLL,
For Himself and the Clarksville Paper Co.,
 F. J. DIEM,
 FREEMAN GRAHAM,
 J. JULIUS GRAHAM,
 E. P. HOOKER,

Trustee for Merchants' National Bank of Defiance,
Ohio, and in His Own Behalf, and
 JAMES C. RICHARDSON,
 By BLUFORD WILSON AND
 OTTO GRESHAM, *Their Solicitors.*

STATE OF ILLINOIS, } ss :
 Cook County, }

John B. Sherwood, being first duly sworn, on oath deposes and says that he is the agent of the foregoing petitioners, and is authorized by them to act on behalf of them and each of them: that he has read the same, and that the same is true of his own knowledge, except as to the matters therein stated to be on information and belief, and as to those matters, he verily believes them to be true.

JOHN B. SHERWOOD.

Subscribed and sworn to before me this 25th day of —, A. D. 1895.

GEO. W. KEMP,
U. S. Com'r, N. D. Ills.

(Endorsed :) Filed May 13, 1895. S. W. Burnham, clerk.

105 On the same day, to wit: the thirteenth day of May, 1895, in the December term of said court, 1894, in the record of proceedings thereof in said entitled cause before the Honorable John W. Showalter, circuit judge, appears the following entry, to wit:

Order on Petition of Dickerman et al.

Entry.

THE NORTHERN TRUST COMPANY and OVID	} In Chancery. 23614.
B. Jameson, as Trustees,	
<i>vs.</i>	
COLUMBIA STRAW PAPER COMPANY.	

This cause coming on to be further heard, upon the application of Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois, Buckstaff Brothers Manufacturing Company, Henry S. Carroll, for himself and the Clarksville Paper Company, F. J. Diem, Freeman Graham, Jr., Julius Graham, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson by Bluford Wilson and Otto Gresham, their solicitors, for leave to be made parties defendant and to file answer and cross-bill, and the said Northern Trust Company and Ovid B. Jameson appearing by their solicitors, Dupee, Judah and Willard, and the said defendant, The Columbia Straw Paper Company by Herrick, Allen and Boyesen, its solicitors, and not objecting to said application. And the court having considered the said application and being fully advised in the premises, is of the opinion that said application should be granted. Thereupon, the court does order, adjudge and decree that the said above-named Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois, Buckstaff Brothers Manufacturing Company, Henry S. Carroll, for himself, and the Clarksville Paper Company, F. J. Diem, Freeman Graham, Jr., Julius Graham, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, be and they are hereby made parties defendant to the original cause herein, with leave to file an answer and cross-bill herein.

106 Afterwards, to wit: on the eighteenth day of May, 1895, came Harry W. Dickerman, trustee for Second National Bank of Rockford, Illinois *et al.*, and filed in the clerk's office of said court their answer to the bill of complaint, which said answer is in the words and figures following, to wit:

Answer of Dickerman et al. to Original Bill.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and OVID	} In Equity. 32614-832.
B. Jameson, Trustees, Complainants,	
against	
THE COLUMBIA STRAW PAPER COMPANY,	
Defendants.	

Answer of Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois; Buckstaff Brothers Manufacturing Company; Henry S. Carroll, for himself and the Clarksville Paper Company; F. J. Diem, Freeman Graham, Jr., Julius Graham, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, defendants, to the bill of complaint.

Now come the above-named defendants in the above entitled cause, and saying to themselves all benefit of exception to the many errors, uncertainties and insufficiencies in said bill of complaint contained, for answer to so much thereof as they are advised is necessary, say:

That they hold and own shares of the preferred and common stock of said codefendant company, The Columbia Straw Paper Company, as follows:

Harry W. Dickerman, as trustee, four hundred shares of preferred and four hundred shares of common stock.

Buckstaff Brothers Manufacturing Company, two hundred and fifty shares of preferred, and five hundred shares of common stock.

107 Henry S. Carroll, individually and as trustee, one hundred and twenty shares of preferred and two hundred and forty shares of common stock.

Fred. J. Diem, one hundred and ten shares of preferred and two hundred and twenty shares of common stock.

Freeman Graham, Jr., and Julius Graham, one hundred and thirty-three shares of preferred and three hundred and sixty-seven shares of common stock.

E. P. Hooker, individually and as trustee, one hundred and twenty-five shares of preferred and two hundred and fifty shares of common stock.

James C. Richardson, one hundred and fifty shares of preferred and three hundred shares of common stock.

These defendants admit that The Northern Trust Company, one of the complainants herein, is a corporation duly organized under and by virtue of the laws of the State of Illinois; that it has its principal office for the transaction of business in the city of Chicago in the northern division of the northern district of said State; but these defendants expressly deny that the said Northern Trust Com-

pany has complied with all the statutory requirements necessary for a legal administration of trusts by it in the State of Illinois, to wit: in failing to comply with section 6, of "An act to provide for and regulate the administration of trusts by trust companies;" and further answering, these defendants admit that the said Ovid B. Jame-son, the other complainant herein, is a citizen, inhabitant and resi-dent of the State of Indiana; and also that the said Columbia Straw Paper Company, one of the defendants herein is a corporation organ-ized and existing under and by virtue of the laws of the State of New Jersey, and is a citizen of said State.

These defendants further answering admit that on or about the 31st day of December, 1892, in pursuance of certain resolutions adopted by the then stockholders and board of directors of the said Columbia Straw Paper Company, the said paper company executed and issued in its corporate name, one thousand bonds of the denom-ination of \$1,000 each, purporting to be a part payment for the con-veyance to it of various real and leasehold properties and of certain mills, plants and factories for the manufacture of straw wrapping and other kinds of paper; and that by the terms of said bonds, the said Columbia Straw Paper Company attempted to agree to pay the bearer or the registered owner of each thereof, the sum of \$1,000

108 in gold coin of the United States, upon certain terms and conditions; and further attempted to agree that until the said bonds should become due and payable, it would pay inter-est thereon at the rate of six per cent. per annum from the 1st day of December, 1892, in half-yearly payments, on the 1st day of June, and on the 1st day of December, in each year, at a certain place mentioned on the coupons attached to said bonds; also that by the terms of such bonds the said defendant, The Columbia Straw Paper Company further attempted to agree that it would redeem the said bonds at various times between the 1st day of December, 1893, and the 1st day of December, 1901, by paying for each of said bonds \$1,100, together with the accrued interest thereon; also that by the terms of said bonds the said Columbia Straw Paper Company fur-ther attempted to agree that it would, from and after the 1st day of December, 1893, pay into the sinking fund for the purpose of pro-viding for the redemption of said bonds, the sum of \$110,000, together with the interest on the bonds previously redeemed as aforesaid; and that also by the terms of said bonds the said defend-ant, The Columbia Straw Paper Company further attempted to agree that the principal notes thereby secured should become due and payable upon the happening of certain events.

These defendants further answering, admit that each of the bonds so executed and issued was certified by The Northern Trust Com-pany, complainant herein, as trustee; but these defendants expressly deny that the holders of each of the said bonds, were or are entitled to the benefit of the trust alleged to have been created by said mort-gage or deed of trust; and these defendants further expressly deny that all of the said one thousand bonds were duly issued, negoti-ated and sold and that they are now outstanding and valid obliga-tions of the defendant, The Columbia Straw Paper Company; and

also expressly deny that all of the said bonds with the coupons annexed thereto have come into the possession of and are now held by persons who have become the owners thereof in good faith and for a valuable consideration; but in further answering, these defendants aver the facts to be that during the summer of 1892, Emanuel Stein, of Chicago, Illinois, E. G. Church of Sterling, Illinois; Philo D. Beard of Buffalo, New York; Randolph Guggenheimer, Samuel Untermeyer, Isaac Untermeyer, Moses Weiman and Maurice Untermeyer, of the firm of Guggenheimer & Untermeyer, doing business at 46 Wall street, New York city; Charles A. Dupee, Noble B. Judah, M. L. Willard and Henry M. Wolf, of the law firm of Dupee, Judah & Willard, doing business in the Adams Express building, Chicago, Illinois; Fred C. Trebein of Xenia, Ohio; John B. Halliday of Chicago; B. M. Freese of Chicago, Illinois; Richard T. Higgins of Vandalia, Illinois; Augustus P. Brown of Fort Madison, Iowa; and William C. Hoppenheimer of Hoboken, New Jersey; and others, entered into an agreement whereby options or executory contracts for the purchase of certain paper mill plants were to be obtained, if possible, on the basis of the payment of so much cash and the balance in the stock of a corporation to be by them formed of said mills; that in securing said options, representations were made to the various mill-owners that it was the intention and expectation of the said promoters to secure the control of about seventy mills; and that the corporation so to be formed would be capitalized at \$3,000,000 of common and \$1,000,000 of preferred stock, which stock was to be issued at par, in part payment for said mills at the option prices so obtained, until the same was exhausted, and that in such a contingency, the corporation so to be organized was to have the power to issue \$1,000,000 of its bonds to complete the payment for said mills.

These defendants further answering aver that after options had been obtained upon thirty-nine of said mills in the name of said Beard and Ramsdell, the total amount of the purchase price of which was \$2,788,000, payable as follows: \$766,000 in cash, \$629,000 in preferred, and \$1,258,000 in the common stock and \$135,000 in the notes of said corporation so to be organized, said parties met and considered them and decided that it would be necessary to provide \$1,000,000 to purchase said property and furnish the running capital; and thereupon said Guggenheimer & Untermeyer submitted to their friends in New York, to wit: William Krauss, Emanuel Lauer, Max Naumberg, Charles Schram, Richard Seidenberg, Sigfreid Rosenberg, Lazarus Nordlinger, Henry Gottretrend, Edwin H. Nordlinger, Solomon Marx, Herman Kohnstamm, Emanuel H. Kohnstaumm, Isaac Herman, estate of Moritz Davidson, Aaron Naumberg, Adolph G. Hupper, Sedford and Leo Herman, Nathan and C. Erlanger, Herman Rosenberg, Bernhard Lowenstein, Max Rosenbaum, Max Rothschild, Otto Huber, William Levromis, Emanuel Goldsmith, Robert T. Spencer, James Flanagan, Benj. Seward, Isaac Guggenheimer, J. H. Hyde, Wm. C. Heppenheimer, A. B. Ansbocher, H. W. Schmidt, Dr. A. Seesal and A. Eilam,

the plan that had been agreed upon by said original promoters above named, and the said last above-named parties thereupon appointed said Guggenheimer & Untermeyer their agents to act for them in securing two hundred and twenty-six bonds of said company at their par value upon a gratuity being given to them of three hundred and eighty-eight full-paid shares of preferred stock, and seven hundred and seventy-six full-paid shares of common stock of the said company so to be organized; and to obtain

110 said bonds and stock the said principals delivered to the said Guggenheimer & Untermeyer their agents the necessary moneys, and said firm of Guggenheimer & Untermeyer also agreed to purchase two hundred and fifty-seven bonds at their par value, upon receiving a gratuity of eight hundred and forty-nine full-paid shares of preferred stock and four thousand three hundred and fifty-seven full-paid shares of said common stock, and the said Guggenheimer & Untermeyer thereupon agreed to purchase for themselves and as such agents, four hundred and eighty-three bonds for the sum of \$483,000 upon receiving a gratuity of twelve hundred and thirty-seven full-paid shares of preferred stock and fifty-one hundred and thirty-three full-paid shares of the common stock of said company.

These defendants further answering aver that at the same time said Philo D. Beard submitted to his friends in Buffalo and other places, to wit: Savings Trust Company, F. L. Danforth, G. E. Rich, George Gorham, A. C. Collier, S. G. De Courcey, A. W. Morgan, George D. Morgan, D. R. Morse, Henry M. Watson, Chas. D. Marshall, Henry and Sadie R. Allman, S. A. Wheeler, Morris Morey, Henry W. Sprague, W. F. Sheehan, George J. Secard, Thomas & Walker, Wilson S. Bissell, Sadie R. Allman, J. Genshofer, S. E. Catlin, George E. Jones, Continental national bank, Mrs. J. C. Eliste, Mrs. A. Murdock, E. J. Hall, Mrs. Helen R. Chester, Mrs. Hattie Bellows, Eben C. Sprague, George T. Chester, H. R. Kenyon, Mary F. Blake, Walter Cook, F. L. Somers and D. P. Pease, the plan that had been agreed upon by the said original promoters, the said last-named parties thereupon appointed the said Philo D. Beard as their agent to act in behalf of himself and themselves in securing two hundred and thirty-eight bonds at their par value with a gratuity of nine hundred and fifty seven full-paid shares of preferred stock, and four thousand four hundred and forty-one full-paid shares of the common stock of said company so to be organized, and to obtain said bonds with said gratuitous stock, the said principals delivered to the said Philo D. Beard, their agent, the necessary moneys, and the said Philo D. Beard thereupon agreed to purchase for himself, and as such agent two hundred and thirty-eight bonds for the sum of \$238,000 upon receiving a gratuity of nine hundred and fifty-seven full-paid shares of the preferred stock, and four thousand four hundred and forty-one full-paid shares of the common stock of said company.

These defendants further answering aver that at the same time the said law firm of Dupee, Judah & Willard, acting for themselves and as the agent of certain of their friends in Chicago, together with

the said Stein, agreed to purchase as such agent and for
111 themselves seventy-seven bonds for the sum of \$77,000 upon receiving a gratuity of one thousand four hundred and ninety-three full-paid shares of preferred stock, and five thousand two hundred and eleven full-paid shares of common stock of the said company so to be organized. And also at the same time the said John B. Halliday agreed to purchase for himself twenty-five bonds for the sum of \$25,000 upon receiving a gratuity of three hundred and seventy full-paid shares of preferred stock, and eight hundred and twenty-seven full-paid shares of the common stock of said company so to be organized. And also at the same time that the said Fred C. Trebein agreed to purchase for himself thirty bonds for the sum of \$30,000, upon receiving a gratuity of sixty full-paid shares of preferred stock, and one hundred and twenty full-paid shares of common stock of the company so to be organized.

These defendants further answering aver that after the arrangements above set out for procuring the bonds and gratuitous stock of the defendant, The Columbia Straw Paper Company, that thereupon all of the said parties aforesaid paid the respective sums of money aforesaid into the hands of the said Henry M. Wolf, as trustee for the purpose of applying the same at the proper time to the purchase of said mills; and these defendants further aver that the giving and issuing of said stock as a gratuity with said bonds, and without any consideration therefor, as aforesaid, was kept a secret from these defendants and from the other owners of mills who had agreed under their options to sell said mills to said Beard and Ramsdell prior to the said 31st day of December, 1892, and that none of these defendants did, as such stockholders or otherwise, participate in any of the acts complained of, and they aver that they are not transferees of stock with knowledge of the stockholders who did participate therein; and since the acts complained of, have come to their knowledge, they or either of them, have not acquiesced therein.

These defendants further answering aver that upon the placing of said moneys in the hands of said Henry M. Wolf, trustee, as aforesaid, the said Beard and Ramsdell assigned, transferred, and set over all their interest in and to said options for the purchase of said mills to said Emanuel Stein without any consideration therefor, but as these defendants are informed and believe, and upon such information and belief charge the same to be true, for the sole purpose of evading the provisions of the statute of New Jersey concerning corporations, under the laws of which State the parties aforesaid at the time of said assignment and transfer to said Stein, had agreed
upon as the State in which to incorporate said company; and
112 that thereupon the said Stein, after consultation and agreement with all of the parties interested therein as principals and agents as aforesaid, accepted in writing said options some time during the month of November, 1892; and upon said firm of Duppe, Judah & Willard examining the titles to said properties and advising the same to be satisfactory, said firm of Guggenheimer & Untermeyer prepared articles of incorporation for the formation of

The Columbia Straw Paper Company, the defendant company in this cause, which articles of incorporation were duly executed by said Philo D. Beard, said William C. Heppenheimer, and one William C. Taylor, each of whom subscribed four shares of the capital stock of said company; said company being incorporated under the laws of the State of New Jersey was authorized to issue \$1,000,000 of preferred and \$3,000,000 of common stock, with the right also "to borrow or raise money for any purpose of the company, securing the same and interest, or for any other purpose to mortgage or charge the undertaking or all or any part of the property present or after acquired;" and caused said articles of incorporation to be filed in the office of the secretary of said State on the 6th day of December, 1892.

These defendants further answering, aver that immediately upon the filing of said articles of incorporation, said stockholders elected as directors of said company the following-named persons: Philo D. Beard, Fred. C. Trebein, E. Gilbert Church, J. B. Halliday, B. M. Freese, Richard T. Higgins, Emanuel Stein, Augustus P. Brown and William C. Heppenheimer, said persons being the same and identical persons making said original agreement during the summer of 1892, as aforesaid; that thereupon said board of directors met in the office of said Guggenheimer & Untermeyer, and elected said Philo D. Beard, president, and one Samuel H. Guggenheimer, secretary, and appointed said Guggenheimer & Untermeyer attorneys in the city of New York, and said Dupee, Judah & Willard attorneys in the city of Chicago, for said company thus organized.

These defendants further answering, aver that thereupon to wit: on the 14th day of December, 1892, said Emanuel Stein, one of the directors of said company, acting for himself and his associates, as aforesaid, made a written proposition to said board of directors to sell and transfer to said company "all the properties, mills, plants, factories and appurtenances to be acquired by him" under the aforesaid options, and which are the same paper mills described in the original bill of foreclosure herein, for \$5,000,000 to be paid by said Columbia Straw Paper Company as follows: \$1,800 in cash; 113 \$1,000,000 in first-mortgage gold bonds of the company, and which are the same and identical bonds and mortgage set out in said bill of foreclosure herein, \$1,000,000 in full-paid shares of the preferred stock of said company, and \$2,998,200 in full-paid shares of the common stock of said company.

These defendants further answering, aver that at the time of the offer by the said director, Stein, as aforesaid, each and every one of the said directors and the principals and agents aforementioned, knew that the par value of the shares of stock asked for by said Stein as purchase-money, exceeded in amount the value of the property in exchange for which said Stein asked that it should be issued; and that each and every of the said directors, principals and agents aforementioned had full knowledge of the real value of said property offered by said Stein but disregarding their duty as directors of said defendant company and with an intent to defraud these defendants and the other mill-owners who were about to

become stockholders under said options, and without the knowledge of these defendants or any of the mill-owners about to become stockholders by virtue of the provisions of said options, deliberately overvalued said property in the sum of \$2,113,000, and purchased the same from said Stein in the manner and upon the terms proposed by him as hereinbefore set out.

These defendants further answering, aver that each and every of the said directors and the principals and agents aforementioned knew at the time of said purchase that the surplus of said stock of said defendant company so issued to said Stein, over and above the amount to be issued to the owners of said paper mill plants, to wit: \$1,887,000, which surplus amounted to \$2,113,000, was to be divided, and afterward actually shared in such division, by said Stein, themselves, the said Guggenheimer & Untermeyer, the said Dupee, Judah & Willard and the said above-named persons heretofore referred to as principals and agents.

These defendants further answering, aver that each and every of the said board of directors and the said persons heretofore referred to as principals and agents, at the time of the purchase of said paper mill plants from said Stein, had full knowledge of the original agreement for the taking of options from said mill-owners, the terms and amounts of each and every of the same, the said pretended assignment from said Beard and Ramsdell to the said Stein without consideration, and that it was intended as a means to evade the force of the statute of New Jersey, as aforesaid, and that all of the above was made in pursuance to the plan agreed upon between them and said law firms of Guggenheimer & Untermeyer, and Dupee,

Judah & Willard, on behalf of themselves and their principals
114 heretofore named; also knew that said money necessary for the cash purchase of said paper mill plants and for the running capital of the corporation formed, were placed in the hands of said Henry M. Wolf, as trustee; also knew that said Stein accepted said options after consultation with them at their request; and also knew that each and every of the said directors were elected for the purpose of effecting and accepting said proposition of said Stein for the sale of said paper mill plant; and also that each and every of the said directors knew that the terms of said purchase were to be kept secret from each and every of the owners of said mill plants who had agreed in their options to take stock at its par value for their several mill plants, including these defendants; and also knew that the fact of the surplus of said stock of the par value of \$2,113,000 being distributed among the said several directors and their confederates as aforesaid was to be kept secret from each and every of the said owners of said paper mill plants so purchased, including these defendants.

These defendants further answering, aver that they are informed and believe, and therefore charge the same to be true, that said Philo D. Beard, for himself and as agents for his confederates in and near the city of Buffalo received from the said Stein in pursuance to said agreement, two hundred and thirty-eight of said bonds sought to be foreclosed in this cause, and also received as a gratuity

and without any consideration therefor, nine hundred and fifty-seven full-paid shares of the preferred and four thousand four hundred and forty-one full-paid shares of the common stock of said company in the manner and form aforesaid; and that the said Beard and his said confederates are still the owners and holders of said bonds and stock, or were such holders and owners at the time of the beginning of this proceeding to foreclose; and that although it is claimed by the Northern Trust Company and Ovid B. Jameson, trustees in the original bill of foreclosure that there is due to the said Beard and *and* his confederates as holders and owners of said bonds aforesaid; the sum of \$238,000, yet in fact the said Beard and his said confederates now owe and are indebted to and hold as trustees for said Columbia Straw Paper Company the sum of \$95,700, the same being the par value of the preferred stock and \$444,100 being the par value of the common stock withdrawn by them illegally and fraudulently from the treasury of the said defendant, The Columbia Straw Paper Company, as aforesaid, and without any payment therefor, either in money or property, as provided by said statutes of the State of New Jersey.

These defendants further answering aver that they are informed and believe, and therefore charge the same to be true, that
115 the said law firm of Guggenheimer & Untermeyer for themselves and as agents for their confederates in and near the city of New York, received from the said Stein in pursuance to said agreement, four hundred and eighty-three of said bonds sought to be foreclosed in this cause, and also received as a gratuity, without any consideration therefor, twelve hundred and sixty-nine full-paid shares of preferred stock and five thousand one hundred and ninety-eight full-paid shares of common stock of said company in the manner and form aforesaid; and that the said Guggenheimer & Untermeyer and their said confederates are still the owners and holders of said bonds and stock, or were such holders and owners at the time of the beginning of this proceeding to foreclose; and that although it is claimed by the Northern Trust Company and Ovid B. Jameson, trustees in the original bill of foreclosure, that there is due to the said law firm of Guggenheimer & Untermeyer and their said principals and confederates as holders and owners of said bonds aforesaid the sum of \$483,000, yet in fact the said Guggenheimer & Untermeyer and their said confederates now owe and are indebted to and hold as trustees for the said Columbia Straw Paper Company, the sum of \$126,900, the same being the par value of the shares of preferred stock and \$519,800, being the par value of the shares of common stock illegally and fraudulently withdrawn by them from the treasury of the said defendant, The Columbia Straw Paper Company as aforesaid, and without any payment therefor either in money or property as provided by said statutes of the State of New Jersey.

These defendants further answering aver that they are informed and believe, and therefore charge the same to be true, that the said Stein and said law firm of Judah & Willard, Dupee, Wolf, for themselves and as agents for their confederates in and near the city of

Chicago, received from the said Stein in pursuance to said agreement, seventy-seven of said bonds sought to be foreclosed in this cause, and also received as a gratuity, without any consideration therefor, fourteen hundred and ninety-three full-paid shares of preferred stock and five thousand two hundred and eleven full-paid shares of common stock of said company in the manner and form aforesaid; and that the said Stein and Dupee, Judah, Willard & Wolf and their confederates are still the owners and holders of said bonds and stock, or were such holders and owners at the time of the beginning of this proceeding to foreclose; and that although it is claimed by the Northern Trust Company and Ovid B. Jameson, trustees in the original bill of foreclosure, that there is due to the said Dupee, Judah, Willard & Wolf and their said confederates as holders and owners of said bonds aforesaid, the sum of 116 \$77,000, yet in fact the said Stein, Dupee, Judah, Willard & Wolf and their said confederates now owe and are indebted to and hold as trustees for the said Columbia Straw Paper Company the sum of \$149,300, the same being the value at par of said shares of preferred stock, and \$521,100 being the par value of the shares of common stock, the same being the value of said stock and bonds illegally and fraudulently withdrawn by them from the treasury of the said defendant The Columbia Straw Paper Company, as aforesaid, and without any payment therefor either in money or property as provided by said statutes of the State of New Jersey.

These defendants further answering aver that after the said bonds and stock had been fraudulently and illegally withdrawn from the treasury of the said Columbia Straw Paper Company, as aforesaid, the said Philo D. Beard, as president of that company, in pursuance of the statute of the State of New Jersey, on the 17th day of May, 1893, caused to be filed with the secretary of said State a certificate verified by him under oath, in which he stated:

"That the sum of \$4,000,000, the amount fixed in the original certificate of incorporation of said company as its total authorized capital stock, \$3,000,000 thereof being divided into thirty thousand shares of common stock, each of the par value of \$100, and \$1,000,000 thereof being divided into ten thousand shares of preferred stock, of the par value of \$100 each, had been fully paid in; \$1,800 thereof in cash and \$3,998,200 thereof by the purchase of property at the fair value thereof;" but these defendants aver that in point of fact such stock had never been fully paid in, either in money or property, as required by the statutes of the State of New Jersey.

These defendants further answering, aver that they are unable to state at the present time the exact amount of gratuitous stock that each and every of said above-named persons hold, but that they will be able to prove the exact amount on the hearing of this cause.

These defendants further answering, aver that by reason of the issue to said Beard, Trebein, Church, Halliday, Higgins, Stein, Brown, Guggenheimer, Samuel, Isaac and Maurice Untermeyer, Weiman, Dupee, Judah, Willard and Wolf, in their own behalf and as agents for the above-named principals, of said gratuitous full-

paid shares of common stock of said company, which under the articles of incorporation was the only voting stock of said company, that said last-named persons held the controlling interest in said company at the time of the fraudulent acts hereinabove set out; and that they were thus enabled in December, 1892, to elect said above-named board of directors, to wit: the said Beard, Trebein, Church, Halliday, Freese, Higgins, Stein, Brown and Heppenheimer; and to re-elect them in December, 1893, since which time no election has been held, and that the last-named parties are still acting as such board of directors, or were at the time of filing the bill of complaint herein, and in a manner destructive to the corporation itself, and for and on behalf of their own interests.

These defendants further answering, admit that said defendant, The Columbia Straw Paper Company, for the purpose of securing the payment of the said one thousand bonds, issued as aforesaid, executed its mortgage or deed of trust, as alleged in paragraph three of the bill of complaint herein, but these defendants aver that for the reasons hereinbefore specifically set forth the execution of the said mortgage was and is, fraudulent and in violation of the rights of these defendants as stockholders of the said Columbia Straw Paper Company, and these defendants aver that each and every of them, said defendants, are *bona fide* holders for value of the preferred and common stock of said defendant company, The Columbia Straw Paper Company.

These defendants further answering, admit that the freehold and leasehold property fraudulently conveyed by the said mortgage or deed of trust are fully set out and described in the alleged trust deed annexed to the said bill of complaint, marked "Exhibit 'A'"

These defendants further answering, admit that the terms of said alleged mortgage or deed of trust are as set out in paragraph five of the bill of complaint herein.

These defendants further answering, admit that by the terms of the said mortgage or deed of trust, the defendant, The Columbia Straw Paper Company, attempted to agree with the complainants herein to redeem and discharge the whole of said issue of bonds by paying for each of said bonds, in addition to all accumulated interest thereon, \$1,100 in gold coin of the United States, at various times; but that in addition to the said issue of bonds being fraudulent and in violation of the rights of these defendants as stockholders, the said purported agreement to pay for each of said bonds in addition to all the accrued interest thereon \$1,100 in gold coin of the United States was and is corrupt, usurious and unlawful to the extent that the said agreement to pay exceeded the sum of \$1,000 for each of the said bonds; by means whereof and by force of the statute of Illinois pertaining to interest, made and provided, the said agreement was and is wholly void in law.

118 These defendants further answering, aver that the said defendant The Columbia Straw Paper Company, was and is, not legally or equitably bound to redeem or discharge the said bonds or pay the interest thereon as is alleged in paragraph 7, at

pages twenty and twenty-one of the bill of complaint filed herein, and therefore they deny that any default in that regard was made by the said Columbia Straw Paper Company.

These defendants further answering, admit that on or about the 22d day of January, 1895, an execution was sued out against the property of said defendant, The Columbia Straw Paper Company upon a judgment obtained against it by James Flanagan before one Underwood, a justice of the peace of Cook county, Illinois, and also that the said defendant, The Columbia Straw Paper Company has failed to remove, discharge or pay such execution; but these defendants aver that they are informed and believe, and therefore charge it to be true, that the said transaction was a fraudulent and collusive act of the active managers of said defendant, The Columbia Straw Paper Company with themselves, as bondholders, in order to give the representatives, the complainants herein, the right to begin this foreclosure proceeding; and these defendants further aver the facts in that regard to be that the said Philo D. Beard as president of the said defendant paper company, the said board of directors acting under and pursuant to the advice of the said law firms of Dupee, Judah, Willard & Wolf and Guggenheimer & Untermeyer, then the attorneys for the said defendant company and in this cause the solicitors for the complainant herein, fraudulently neglected and refused to pay and discharge six interest coupons on the bonds of one James Flanagan, a resident of the city of New York, in order that suit might be instituted thereon; and the said Guggenheimer & Untermeyer knowing the purpose of said neglect and refusal to pay, and combining and confederating with the said Beard, as president and the said board of directors and the said Dupee, Judah & Willard, caused said Flanagan, a resident of the State and city of New York, to institute an action at law in the office of the said Underwood, a justice of the peace in the city of Chicago, on the 22d day of January, 1895, and upon said justice of the peace issuing summons addressed to said defendant corporation and served upon said Beard as president, requiring said defendant corporation to appear to said action by the 28th day of January, 1895, said Beard immediately, on the service of said summons at five o'clock p. m. of January 22d, 1895, waived the time given by plaintiff for answer, entered the appearance of said defendant corporation and
119 consented to an immediate trial in the evening of said January 22d, 1895, made no defense thereto, but allowed judgment to be entered and an execution to issue on the same day, to wit: January 22d, 1895, and refused and failed to pay and discharge the same, having the ability so to do, and on the 24th day of January, 1895, said Dupee, Judah & Willard, now as solicitors of the trustees under said mortgage, filed on their behalf a *printed* bill of complaint, prepared by said law firm of Guggenheimer & Untermeyer, alleging the fact of said judgment in favor of said Flanagan being taken and an execution being issued thereon and unpaid as a basis and reason for the foreclosure of said mortgage.

These defendants further answering, neither admit nor deny that

the said trustees have been requested in writing, by the owners and holders of more than one-third of said bonds to enforce the provisions of the said alleged trust and to bring this suit, but leaves complainants to make proof thereof.

These defendants further answering, deny that the defendant, The Columbia Straw Paper Company is insolvent, as in said bill of complaint alleged, but aver the fact to be that the said complainants, Guggenheimer, Untermeyer, Beard, Higgins, Dupee, Judah, Willard and Wolf and others heretofore named and referred to as principals and agents, combining and confederating to wreck the said defendant paper company and defraud these defendants as stockholders therein, have withdrawn from the treasury of the said defendant company, without reimbursing the same, large numbers of bonds and stock as hereinbefore particularly set out, to the value of over \$3,000,000, all of which the said complainants now hold in trust for the said defendant paper company, and that the same are assets of the defendant company and not liabilities as in said bill of complaint alleged; and that also the said complainants Beard, Stein and Higgins, while acting respectively as president, secretary and treasurer, and vice-president and general manager of the said defendant, The Columbia Straw Paper Company, and said law firms of Dupee, Judah, Willard & Wolf, and said Guggenheimer & Untermeyer, caused to be organized under the laws of the State of New Jersey a certain corporation styled "The Paper Commission Company," and caused themselves to be elected officers and directors thereof, and by means of said Paper Commission Company and in its own name combined and confederated between themselves as officers and directors and attorneys of the said defendant company, in violation of their duties as such officers and to defraud the said defendant company and these defendants as stockholders therein, succeeded in levying grossly unjust and inequitable tolls and charges upon the sales which they caused to be made by and
120 through themselves in the name of the said Paper Commission Company, of all of the products of said defendant, The Columbia Straw Paper Company, and thereby under the disguise of commissions and attorneys's fees fraudulently withdrew from the treasury of the said defendant company large sums of money, to wit: more than one hundred thousand dollars; all of which the said complainants, Beard, Stein and Higgins, Dupee, Judah, Willard & Wolf, and Guggenheimer & Untermeyer, now hold in trust for the defendant, The Columbia Straw Paper Company.

These defendants further answering, admit that the said defendant, The Columbia Straw Paper Company, is the owner of the various properties set out in paragraph 10 of the bill of complaint filed herein; and also that all of the said property was taken into the possession of the Northern Trust Company and Ovid B. Jamieson, complainants herein, but aver that such possession was collusive, fraudulent and illegal, inasmuch as the said Northern Trust Company has never complied with all the statutory requirements neces-

sary for a valid administration of trusts by it in the State of Illinois, to wit: in failing to comply with section 6 of "An act to provide for and regulate the administration of trusts by trust companies;" these defendants also admit that a large portion of said property is perishable in its nature, and that other of the property of the said defendant will greatly deteriorate unless the same is kept in operation.

These defendants further answering, admit that in and by said deed of trust it is provided on a certain contingency that the said trustees might enter into possession and enjoyment of and collect and receive and enjoy the rents, incomes and profits of the property of the said defendant company as fully set out in paragraph 11, of the bill of complaint filed herein; but these defendants aver that the said agreement was fraudulent by reason of the fact hereinabove more particularly set out; and also that the terms of said provision were incapable of being carried into effect by reason of the said Northern Trust Company not having complied with the statutory requirements of the State of Illinois as hereinabove more particularly set out.

These defendants further answering, aver that all of the officers and directors of the said defendant paper company are large holders of the bonds sought to be foreclosed in this proceeding, and have arranged their business affairs in this regard so that it will be to their greater advantage to admit without defense the illegal and fraudulent mortgage and to permit the foreclosure of the same; and to that end the said officers and directors have employed the
121 firm of Herrick, Allen & Boyesen to act as solicitors on behalf of said defendant company, The Columbia Straw Paper Company, and concealing from said last-named solicitors the facts as hereinabove set out, have induced and caused them to file the answer of the said Columbia Straw Paper Company now on file in this cause, in which all of the averments of the bill of foreclosure of said mortgage are admitted to be true, saving and excepting only the fact as to whether a sufficient number of bondholders have instructed and authorized said trustee to institute this suit, which fact the said answer neither admits nor denies.

These defendants, further answering, deny that the complainants are entitled to the relief, or any part thereof, in the said bill of complaint demanded, and without this, that there is any other matter, cause or thing in the complainants' said bill of complaint contained, material or necessary, for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants, all which matters and things these defendants are ready and willing to aver, maintain and prove as this honorable court shall direct, and pray that these defendants may have leave to file their cross-bill herein, seeking such affirmative relief touching the matters herein answered and complained of as may be just and equitable, and for such other and further re-

lief as may accord with justice and the equity practice of this honorable court.

HARRY W. DICKERMAN,

Trustee for Second National Bank of Rockford, Illinois,

BUCKSTAFF BROTHERS MANU-

FACTURING COMPANY,

HENRY S. CARROLL,

HENRY S. CARROLL,

Trustee for Clarksville Paper Company,

F. J. DIEM,

FREEMAN GRAHAM, JR.,

JULIUS GRAHAM,

E. P. HOOKER,

E. P. HOOKER,

Trustee for the Merchants' National Bank of Defiance, Ohio, and

JAMES C. RICHARDSON, *Defendants,*

By JOHN B. SHERWOOD, *Their Agent.*

By BLUFORD WILSON AND

OTTO GRESHAM,

Solicitors for Defendants and of Counsel.

(Endorsed :) Filed May 18, 1895. S. W. Burnham, clerk.

122 Be it remembered that on the eighteenth day of May, 1895, came Harry W. Dickerman, trustee of the Second National Bank of Rockford, Illinois, *et al.*, and by leave of court first had and obtained, filed in the clerk's office of said court a cross-bill against The Northern Trust Company, Ovid B. Jameson, Columbia Straw Paper Company *et al.*, and it now appearing that said original cross-bill has been mislaid or lost, it is stipulated that a printed copy of said cross-bill may be used in making up this record, which said stipulation is in the words and figures following, to wit :

Stipulation.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } ss :

NORTHERN TRUST COMPANY ET AL.

vs.

COLUMBIA STRAW PAPER COMPANY.

} In Chancery.

and

HARRY W. DICKERMAN, Trustee, ET AL.

vs.

PHILO D. BEARD ET AL.

} Cross-bill.

It appearing that the cross-bill of Harry W. Dickerman, trustee *et al.*, filed in said cause, has been mislaid or lost, it is now stip

ulated and agreed that a printed copy of said cross-bill may be substituted and filed in place of said original.

August 18, 1896.

OTTO GRESHAM,

Solicitor for Complainant,

Per JNO. S. COOPER.

DUPEE, JUDAH, WILLARD &
WOLF,

Solicitors for Northern Trust Co. and Ovid B. Jameson.

(Endorsed :) Filed August 18, 1896. S. W. Burnham, clerk.

123

Cross-bill.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and OVID B. }

Jameson, Trustee, Complainants,

against

THE COLUMBIA STRAW PAPER COMPANY, De- }

fendant.

In Equity. 32614-
832.

Cross-bill of Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois; Buckstaff Brothers Manufacturing Company, Henry S. Carroll, for himself and the Clarksville Paper Company; Fred J. Diem, Freeman Graham, Jr., Julius Graham, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, defendants.

To the honorable the judges of said court in chancery sitting:

Your orators, Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois; Buckstaff Brothers Manufacturing Company, a corporation of the State of Nebraska; Henry S. Carroll, of Clarksville, Missouri, for himself and the Clarksville Paper Company, a corporation of the State of Missouri; Fred J. Diem, of Cincinnati, Ohio; Freeman Graham, Jr., and Julius Graham, both of Rockford, Illinois; E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, of Lockland, Ohio, by leave of this honorable court first obtained, brings this their cross-bill of complaint in behalf of themselves, and of all other stockholders who may hereafter choose to join herein, and contribute to the expenses hereof.

1. And thereupon, your orators respectfully represent that they hold and own shares of the preferred and common stock of,
124 said defendant company, Columbia Straw Paper Company as follows:

Henry W. Dickerman, as trustee, four hundred shares of preferred and four hundred shares of common.

Buckstaff Brothers Manufacturing Company, two hundred and fifty shares of preferred and five hundred shares of common.

Henry S. Carroll, individually and as trustee, one hundred and twenty shares of preferred and two hundred and forty shares of common.

Fred J. Diem, one hundred and ten shares of preferred and two hundred and twenty shares of common.

Freeman Graham, Jr., and Julius Graham, one hundred and thirty-three shares of preferred and two hundred and thirty-seven shares of common, each.

E. L. Hooker, individually and as trustee, one hundred and twenty-five shares of preferred and two hundred and fifty shares of common.

James C. Richardson, one hundred and fifty shares of preferred and three hundred shares of common.

That each and every of your orators are the *bona fide* owners and holders respectively of said shares, as aforesaid, for value, and that they, your orators, did not as such stockholders or otherwise participate in any of the acts herein complained of, and they aver that they are not transferees with knowledge of the stockholders who did participate therein, and since the acts, hereinafter complained of have come to their knowledge, they, or either or any of them, have not acquiesced therein.

2. And thereupon, your orators respectfully represent unto your honors that the Northern Trust Company and Ovid B. Jameson, two of the defendants hereinafter named, on or about the twenty-fourth day of January, 1895, exhibited in this honorable court their bill of complaint against The Columbia Straw Paper Company, a defendant hereinafter named, to which bill your orators were subsequently made defendants, to foreclose a mortgage therein described, and thereby praying that said mortgage or deed of trust be foreclosed and be decreed to be a first and paramount lien on the said premises and the property therein described; and that all and singular said property and premises be sold under final judgment or decree of this honorable court, and that said complainants

125 therein might bid for and purchase said property; that an accounting may be had wherein and whereby it should be ascertained and determined as to the amount due upon said bonds, and what allowance should equitably be made to the said complainants as trustees, and, after the payment of the costs and expenses of said action and sale and allowance to the said complainants and their trustees, that the balance might be applied to the satisfaction of the entire sum secured by the mortgage, and paid over to said complainants as trustees of the holders of said bonds and coupons; that the Columbia Straw Paper Company might be adjudged to be liable and required to pay said complainants the amount of any deficiencies which may remain after the application of such balance in the manner aforesaid; and that an account might be taken of the bonds and coupons alleged to be secured by said mortgage or deed of trust and the amount due thereon for principal and interest and the names of the lawful owners *owners* thereof ascer-

tained; that a receiver might be appointed by this honorable court according to its course and practice, with the usual powers of receivers in like cases, of all the mortgaged property, premises and franchises, and the rents, issues, and incomes thereof, to operate the said property to the advantage of the said bondholders; that a provisional and preliminary injunction be issued, restraining the said Columbia Straw Paper Company, its directors, officers, agents, and creditors from interfering with, transferring, selling, or disposing of any of the said mortgaged property and premises and from taking possession of, seizing, selling or attempting to sell, either by judicial process or otherwise, said property; and that said complainants might be authorized to apply to any other United States circuit court of competent jurisdiction for proceedings in aid of the primary jurisdiction of this honorable court; and that the said complainants might have such other and further relief as the case may require; and your orators having been duly made defendants, appeared and put in their answer thereto; as from said bill and the pleadings and proceedings in said cause, now remaining on file and of record in this honorable court, reference thereto being had, will more fully appear.

3. Your orators further represent that during the summer of 1892, Emanuel Stein, of Chicago, Illinois; Elbridge Gilbert Church, of Sterling, Illinois; Philo D. Beard and Thomas T. Ramsdell, of Buffalo, New York; Randolph Guggenheimer, Samuel Untermeyer, Isaac Untermeyer, Moses Weinan and Maurice Untermeyer, composing the law firm of Guggenheimer & Untermeyer, doing business at 46 Wall street, New York city; Charles A. Dupee, Noble B. Judah, M. L. Willard and Henry M. Wolf, composing the law firm of Dupee, Judah and Willard, doing business in the Adams Express building, Chicago, Illinois; Fred C. Trebein, of Xenia, Ohio; John B. Halliday, of Chicago, Illinois; B. M. Frees, of Chicago, Illinois; Richard T. Higgins, of Vandalia, Illinois; Augusta P. Brown, of Ft. Madison, Iowa, and William C. Heppenheim, of Hoboken, New Jersey, and others entered into an agreement whereby options or executory contracts for the purchase of certain paper mill plants were to be obtained, if possible, on the basis of the payment of so much cash and the balance in the stock of a corporation to be by them formed of said mills; that in securing said options, representations were made by them to the various mill-owners that it was the intention and expectation of the said promoters to secure the control of about seventy mills; and that the corporation so to be formed would be capitalized at \$3,000,000 of common and \$1,000,000 of preferred stock, which stock was to be issued at par, in part payment for said mills at the option prices so obtained, until the same was exhausted, and that in such a contingency the corporation so to be organized was to have the power to issue \$1,000,000 of its bonds to complete the payment for said mills.

Your orators further respectfully represent that after options had been obtained upon thirty-nine of said mills in the name of said Beard and Ramsdell, the total amount of the purchase price, of

which was \$2,788,000 payable as follows: \$766,000 in cash, \$629,000 in the preferred, and \$1,258,000 in the common stock and \$135,000 in the notes of said corporation so to be organized, said parties met and considered them, and decided that it would be necessary to provide \$1,000,000 to purchase said property and furnish the running capital; and thereupon said Guggenheimer & Untermeyer submitted to their friends in New York, to wit: William Krauss, Emanuel Lauer, Max Naumberg, Charles Schram, Richard Seidenberg, Sigfried Rosenberg, Lazarus Nordlinger, Henry Gottretrend, Edwin H. Nordlinger, Solomon Marx, Herman Kohnstamm, Emanuel Kohnstamm, Isaac Herman, estate of Moritz Davidson, Aaron Naumberg, Adolph G. Hupper, Sedford and Leo Herman, Nathan and C. Erlanger, Herman Rosenberg, Bernard Lowenstein, Max Rosenbaum, Max Rothschild, Otto Huber, William Levromis, Emanuel Goldsmith, Robert T. Spencer, James Flanagan, Benj. Seward, Isaac Guggenheimer, J. H. Hyde, Wm. C. Heppenheimer, A. B. Ausbocher, H. W. Schmidt, Dr. A. Seesal and A. Eilam, the plan that had been agreed upon by said original promoters above named, and the said last above-named parties thereupon appointed said Guggenheimer & Untermeyer their agents to act for them in securing two hundred and twenty-six bonds of said company at their par value upon a gratuity being given to them of three hundred and eighty-eight

127 full-paid shares of preferred stock and seven hundred and seventy-six full-paid shares of the common stock of said company, and said firm of Guggenheimer & Untermeyer also agreed to purchase two hundred and fifty-seven bonds at their par value upon receiving a gratuity of eight hundred and forty-nine full-paid shares of preferred stock and four thousand three hundred and fifty-seven full-paid shares of said common stock; and to obtain said bonds with said gratuitous stock the said principals delivered to the said Guggenheimer & Untermeyer, their agents, the necessary moneys, and the said Guggenheimer & Untermeyer thereupon agreed to purchase for themselves and as such agents four hundred and eighty-three bonds for the sum of \$483,000, upon receiving a gratuity of twelve hundred and thirty-seven full-paid shares of preferred stock and fifty-one hundred and thirty-three full-paid shares of the common stock of the said company.

Your orators further respectfully represent that at the same time said Philo D. Beard submitted to his friends in Buffalo and other places, to wit: Savings Trust Company, F. L. Danforth, G. B. Rich, George Gorham, A. C. Collier, S. G. De Gourcey, A. W. Morgan, George D. Morgan, D. R. Morse, Henry M. Watson, Chas. D. Marshall, Henry and Sadie R. Allman, S. A. Wheeler, Morris Morey, Henry W. Sprague, W. F. Sheehan, George J. Secard, Thomas & Walker, Wilson S. Bissell, Sadie R. Allman, J. Genshofer, S. E. Catlin, George E. Jones, Continental national bank, Mrs. J. C. Eliste, Mrs. A. Murdock, E. J. Hall, Mrs. Helen R. Chester, Mrs. Hattie Bellows, Eben C. Sprague, George T. Chester, H. R. Kenyon, Mary F. Blake, Walter Cook, F. L. Somers and D. P. Pease, the plan that had been agreed upon by the said original

promoters; the said last-named parties thereupon appointed the said Philo D. Beard as their agent to act on behalf of himself and of themselves in securing two hundred and thirty-eight bonds of said company at their par value, with a gratuity of nine hundred and fifty-seven full-paid shares of preferred stock and four thousand four hundred and forty-one full-paid shares of the common stock of said company so to be organized, and to obtain said bonds, with said gratuitous stock, the said principals delivered to the said Philo D. Beard, their agent, the necessary moneys, and the said Philo D. Beard thereupon agreed to purchase for himself, and as such agent, two hundred thirty-eight bonds for the sum of \$238,000 upon receiving a gratuity of nine hundred fifty-seven full-paid shares of the preferred stock and four thousand four hundred and forty-one full-paid shares of the common stock of said company.

128 Your orators further respectfully represent that at the same time the said law firm of Dupee, Judah, Willard & Wolf, acting for themselves and as the agent of certain of their friends in Chicago, together with the said Stein, agreed to purchase for themselves, and as such agents, seventy-seven bonds for the sum of \$77,000 upon receiving a gratuity of one thousand four hundred and ninety-three full-paid shares of preferred stock and five thousand two hundred and eleven full-paid shares of common stock of the said company so to be organized. And also at the same time the said John B. Halliday agreed to purchase for himself twenty-five bonds for the sum of \$25,000 upon receiving a gratuity of three hundred and seventy full-paid shares of preferred stock and eight hundred and twenty-seven full-paid shares of the common stock of said company so to be organized. And also at the same time that the said Fred C. Trebein agreed to purchase for himself thirty bonds for the sum of \$30,000 upon receiving a gratuity of sixty full-paid shares of preferred stock and one hundred and twenty full-paid shares of common stock of the said company so to be organized.

Your orators further respectfully represent that after the arrangements above set out for producing the bonds and gratuitous stock of defendant, The Columbia Straw Paper Company, that thereupon all of the said parties aforesaid paid the respective sums of money aforesaid, into the hands of the said Henry M. Wolf, as trustee, for the purpose of applying the same at the proper time to the purchase of said mills; and your orators further represent that the giving and issuing of said stock as a gratuity with said bonds, and without any consideration therefor as aforesaid, was kept a secret from your orators and from the other owners of mills who had agreed under their options to sell said mills to said Beard and Ramsdell, prior to the said thirty-first day of December, 1892.

Your orators further represent that upon the placing of said sums of moneys in the hands of said Henry M. Wolf, trustee, as aforesaid, the said Beard and Ramsdell assigned, transferred and set over all their interest in and to said options, for the purchase of said mills to said Emanuel Stein, without any consideration therefor, but as your orators are informed and believe, and upon such information and belief charge to be true, for the sole purpose

of evading the provisions of the statute of New Jersey concerning corporations, under the laws of which State the parties aforesaid at the time of the said assignment and transfer to said Stein, had agreed upon as the State in which to incorporate said company; and that thereupon the said Stein, after consultation and
 129 agreement with all of the parties interested therein as principals and agents as aforesaid, accepted in writing said options, some time during the month of November, 1892; and upon said firm of Dupee, Judah, Willard & Wolf examining the titles to said properties and advising the same to be satisfactory, said firm of Guggenheimer & Untermeyer prepared articles of incorporation for the formation of The Columbia Straw Paper Company, the defendant company in this cause, which articles of incorporation were duly executed by said Philo D. Beard, said William C. Heppenheimer, and one William C. Taylor, each of whom subscribed four shares of the capital stock of said company; said company being incorporated under the laws of the State of New Jersey, was authorized to issue \$1,000,000 of preferred and \$3,000,000 of common stock with the right also to borrow or raise money *for any purpose of the company*, securing the same and interest, or for any other purpose to mortgage or charge the undertaking, or all or any part of the property present or after acquired, and caused said articles of incorporation to — filed in the office of the secretary of said State on the sixth day of December, 1892.

Your orators further respectfully represent that immediately upon the filing of said articles of incorporation, said stockholders elected as directors of said company the following-named persons: Philo D. Beard, Fred C. Trebein, E. Gilbert Church, J. B. Halliday, B. M. Frees, Richard T. Higgins, Emanuel Stein, Augustus P. Brown and William C. Heppenheimer, said persons being the same and identical persons making said original agreement during the summer of 1892 as aforesaid; that thereupon said board of directors met in the office of said Guggenheimer & Untermeyer and elected said Philo D. Beard, president, and one Samuel H. Guggenheimer, secretary, and appointed said Guggenheimer & Untermeyer attorneys in the city of New York, and said Dupee, Judah, Willard & Wolf, attorneys in the city of Chicago, for said company thus organized.

Your orators further respectfully represent that thereupon, to wit: on the fourteenth day of December, 1892, said Emanuel Stein, one of the directors of said company, acting for himself and his associates, as aforesaid, made a written proposition to said board of directors to sell and to transfer to said company "all the properties, mills, plants, factories and appurtenances to be acquired by him" under the aforesaid options, and which are the same paper mills described in the original bill of foreclosure herein for \$5,000,000 to be paid by said Columbia Straw Paper Company as follows: \$1,800 in cash, \$1,000,000 in first-mortgage bonds of the company, and which
 130 are the same and identical bonds and mortgage set out in said bill of foreclosure herein; \$1,000,000 in full-paid shares of the preferred stock of said company, and \$2,998,200 in full-paid shares of the common stock of said company.

Your orators further respectfully represent that at the time of the offer by the said Director Stein, as aforesaid, each and every one of the said directors and the principals and agents aforesaid knew that the par value of the shares of stock asked for by said Stein as purchase-money exceeded in amount the value of the property in exchange for which said Stein asked that it should be issued; and that each and every of the said directors, principals and agents aforesaid had full knowledge of the real value of said property, offered by said Stein, but disregarding their duty as directors of said defendant company, and with an intent to defraud your orators and the other mill-owners who were about to become stockholders under said options, and without the knowledge of your orators or any of the mill-owners about to become stockholders by virtue of the provisions of said options, deliberately and fraudulently overvalued said property in the sum of \$2,113,000, and purchased the same from said Stein in the manner and upon the terms proposed by him as hereinbefore set out.

Your orators further respectfully represent that each and every of the said directors and the principals and agents aforementioned knew at the time of said purchase that the surplus of said stock of said defendant company so issued to said Stein, over and above the amount to be issued to the owners of said paper mill plants, to wit: \$1,887,000, which surplus amounted to \$2,113,000, was to be divided, and was afterwards actually shared in such division, by said Stein, themselves, the said Guggenheimer & Untermeyer, the said Dupee, Judah, Willard & Wolf, and the said above-named persons heretofore referred to as principals and agents.

Your orators further respectfully represent that each and every of the said board of directors and the said persons heretofore referred to as principals and agents, at the time of the purchase of said paper mill plants from the said Stein, had full knowledge of the original agreement for the taking of options from said mill-owners, the terms and amounts of each and every of the same, the said pretended assignment from said Beard & Ramsdell to the said Stein, without consideration, and that it was intended as a means to evade the provisions of the statutes of New Jersey as aforesaid, and that all of the above was made in pursuance to the plan agreed upon between them and said law firms of Guggenheimer & Untermeyer, and

Dupee, Judah, Willard & Wolf, on behalf of themselves
131 and their principals, heretofore named; also knew that said money, necessary for the cash purchase of said paper mill plants and for the running capital of the corporation formed, were placed in the hands of said Henry M. Wolf, as trustee; also knew that said Stein accepted said options after consultation with them, at their request; and also knew that each and every of the said directors were elected for the purpose of effecting and accepting said proposition of said Stein for the sale of said paper mill plants, and also that each and every of the said directors knew that the terms of said purchase were to be kept secret from each and every of the owners of said mill plants who had agreed in their options to take stock at par value for their several mill plants, including your orators

and also knew that the fact of the surplus of said stock of the par value of \$2,113,000 being distributed among the said several directors and their confederates, as aforesaid, was to be kept secret from each and ever of said owners of said paper mill plants so purchased, including your orators.

Your orators further respectfully represent that they are informed and believe, and therefore charge to be true, that said Philo D. Beard, for himself and for his confederates, as agent, in and near the city of Buffalo, received from the said Stein, in pursuance to said agreement, two hundred and thirty-eight of said bonds sought to be foreclosed in this cause, and also received as a gratuity and without any consideration therefor, nine hundred and fifty-seven full-paid shares of the preferred stock and four thousand four hundred and forty-one full-paid shares of the common stock of said company, in the manner and form aforesaid; and that the said Beard and his said confederates are still the holders and owners of said bonds and stock, or were such holders and owners at the time of the beginning of this proceeding to foreclose; and that although it is claimed by the Northern Trust Company and Ovid B. Jameson, trustees, in the original bill of foreclosure, that there is due to the said Beard and his said confederates, as holders and owners of said bonds aforesaid, the sum of \$238,000, yet in fact the said Beard and his said confederates now owe and are indebted to, and hold as trustees for said Columbia Straw Paper Company, the sum of \$95,700, the same being the par value of the shares of preferred stock, and \$140,100 being the par value of the shares of the common stock, withdrawn by them illegally and fraudulently from the treasury of the said defendant, The Columbia Straw Paper Company, as aforesaid, and without any payment therefor either in money or property, as provided by said statutes of the State of New Jersey.

132 Your orators further respectfully represent that they are informed and believe, and therefore charge the same to be true, that the said law firm of Guggenheimer & Untermeyer, for themselves and as agents for their confederates in and near the city of New York, received from the said Stein, in pursuance to said agreement, four hundred and eighty-three of said bonds sought to be foreclosed in this cause, and also received as a gratuity without any consideration therefor twelve hundred and sixty-nine full-paid shares of preferred stock and five thousand one hundred and ninety-eight full-paid shares of common stock of said company in the manner and form aforesaid; and that the said Guggenheimer & Untermeyer and their said confederates are still the owners and holders of said bonds and stock, or were such holders and owners at the time of the beginning of this proceeding to foreclose; and that although it is claimed by the Northern Trust Company and Ovid B. Jameson, trustees in the original bill of foreclosure, that there is due to the said Guggenheimer & Untermeyer and their said principals and confederates, as holders and owners of said bonds aforesaid, the sum of \$483,000; yet, in fact, the said Guggenheimer & Untermeyer and their said confederates now owe and are indebted to and hold, as trustees for the said Columbia Straw Paper Company, the sum of

\$126,900, the same being the par value of the shares of preferred stock, and \$519,800, being the par value of the shares of common stock, illegally and fraudulently withdrawn by them from the treasury of the said defendant, The Columbia Straw Paper Company as aforesaid, and without any payment therefor, either in money or property, as provided by said statutes of the State of New Jersey.

Your orators further respectfully represent that they are informed and believe, and therefore charge the same to be true, that the said Stein and said law firm of Dupee, Judah, Willard & Wolf, for themselves and as agents for their confederates in and near the said city of Chicago, received from the said Stein, in pursuance of said agreement, seventy-seven of said bonds sought to be foreclosed in this cause, and also received as a gratuity, without any consideration therefor, 1,493 full-paid shares of preferred stock and 5,211 full-paid shares of common stock of said company in the manner and form aforesaid; that the said Stein, Dupee, Judah, Willard & Wolf and their said confederates are still the owners and holders of said bonds and stock, or were such holders and owners, at the time of the beginning of this proceeding to foreclose, and that, although it is claimed by the Northern Trust Company and Ovid B. Jameson, trustees in the original bill of foreclosure, that there is due to the said Stein

133 and Dupee, Judah, Willard & Wolf and their said confederates, as holders and owners of said bonds aforesaid, the sum of \$77,000; yet, in fact, the said Stein and Dupee, Judah, Willard & Wolf and their said confederates now owe and are indebted to and hold as trustees for the said Columbia Straw Paper Company the sum of \$149,300, the same being the par value of said shares of preferred stock, and \$521,100, being the par value of said shares of the common stock, illegally and fraudulently withdrawn by them from the treasury of the said defendant, The Columbia Straw Paper Company as aforesaid, and without any payment therefor, either in money or property, as provided by said statutes of the State of New Jersey.

Your orators further respectfully represent that after the said gratuitous stock had been fraudulently and illegally withdrawn from the treasury of the said Columbia Straw Paper Company as aforesaid the said Philo D. Beard, as president of that company, in pursuance of the statutes of the State of New Jersey, on the 17th day of May, 1893, caused to be filed with the secretary of said State a certificate, verified by him under oath, in which he stated "that the sum of \$4,000,000, the amount fixed in the original certificate of incorporation of said company, as its total authorized capital stock, \$3,000,000 thereof being divided into thirty thousand shares of common stock, each of the par value of \$100, and \$1,000,000 thereof being divided into ten thousand shares of preferred stock of the par value of \$100 each, has been fully paid in; \$1,800 thereof in cash, and \$3,998,200 thereof by the purchase of property at the fair value thereof." But your orators aver that in point of fact such stock had never been fully paid in, either in money or property, as required by the statutes of the State of New Jersey, but had been issued in the manner and form aforesaid, and not otherwise.

Your orators further respectfully represent that they are unable

to state at the present time the exact amount of gratuitous stock that each and every of said above-named persons received and hold, but aver that they will be able to prove the exact amount on the hearing of this cause.

Your orators further respectfully represent that by reason of the issue to said Beard, Trebein, Church, Halliday, Higgins, Stein, Brown, Guggenheimer, Samuel, Isaac and Maurice Untermeyer, Weiman, Dupee, Judah, Willard and Wolf, in their own behalf and as agents for the above-named principals, of said gratuitous full-paid shares of common stock of said company, *which, under the articles of incorporation, was the only voting stock of said company*, that

134 said last-named persons held the controlling interest in said company at the time of the fraudulent acts hereinabove set out; and that they were thus enabled in December, 1892, to elect said above-named board of directors, to wit: the said Beard, Trebein, Church, Halliday, Frees, Higgins, Stein, Brown and Hepenheimer; and to re-elect them in December, 1893, since which time no election has been held; and that the last-named parties are still, or were at the time of filing the original bill herein, acting as such board of directors, and in a manner destructive to the corporation itself, and for and on behalf of their own interests.

4. Your orators further respectfully represent that the execution of said mortgage by the Columbia Straw Paper Company, as-alleged in paragraph 3 of the bill of complaint herein, for the reasons hereinbefore specifically set forth, was, and is, fraudulent and in violation of the rights of your orators and others as stockholders of the said Columbia Straw Paper Company, and that said mortgage and bonds issued thereunder were without consideration to said defendant company and were of no benefit thereto as hereinbefore set out.

5. Your orators further respectfully represent that the provisions of the said mortgage or deed of trust providing for the unconditional redemption and discharge by the said Columbia Straw Paper Company of the whole issue of said bonds, by paying for each, in addition to all accrued interest thereon, the sum of \$1,100 in gold coin of the United States, at various times, are corrupt, usurious, unlawful and wholly void.

Your orators further respectfully represent that the said Columbia Straw Paper Company was, and is, not legally or equitably bound to redeem or discharge the said bonds or pay the interest thereon, as is alleged in paragraph 7, at pages 20 and 21, of the said original bill of complaint filed herein; and, therefore, they represent that no default in that regard has been made.

6. Your orators further respectfully represent that by the provisions of the said mortgage, set out in Exhibit A of the original bill of complaint at article 3, section 4, on page 18 thereof, it is provided that in case said defendant corporation, The Columbia Straw Paper Company, should allow a judgment to be taken against it and an execution to issue thereon and not discharge the same forthwith, the said trustees might exercise their rights to foreclose said mortgage; and in paragraph 8 at page 21 of the original bill.

of complaint, the complainants herein attempt to take advantage of said provision in said mortgage, but your orators are informed and believe, and, upon such information and belief, charge the same

135 to be true, that said Philo D. Beard, as president of said company and said board of directors, acting under and pursuant to the advice of said Dupee, Judah & Willard and Wolf, and their associates said firm of Guggenheimer & Untermeyer, the attorneys of said company, neglected and refused to pay and discharge six interest coupons on the bonds of one James Flanagan, a resident of the city of New York, in order that suit might be instituted thereon; that said Guggenheimer & Untermeyer, knowing the purpose of said neglect and refusal to pay, and combining and confederating with said Beard as president and said board of directors and said Dupee, Judah, Willard & Wolf, caused said Flanagan, a resident of the city and State of New York, to institute an action at law in the office of one George W. Underwood, a justice of the peace, having his office at No. 128 North Clark street, in the city of Chicago, Illinois, on the twenty-second day of January, 1895, and upon said justice of the peace issuing summons addressed to said defendant corporation and the same being served upon the said Beard, as president, at the hour of five p. m. of said day, requiring said defendant corporation to appear to said action upon the twenty-eighth day of January, 1895, said Beard, immediately upon the service of said summons on said twenty-second day of January, 1895, entered the appearance of said defendant corporation, waived the time given by plaintiff for answer and consented to immediate trial; and made no defense thereto, but allowed judgment to be entered and an execution to issue on that same date, to wit: January twenty-second, 1895, and said president and said board of directors failed and refused to pay and discharge said execution, having the ability to do so; and on the twenty-fourth day of January, 1895, said Dupee, Judah, Willard & Wolf, on behalf of the trustees under said mortgage, filed a printed bill of complaint prepared by said firm of Guggenheimer & Untermeyer, in the city of New York, alleging the fact of said judgment in favor of said Flanagan being taken, and an execution being issued thereon and remaining unpaid, as a basis and reason for the foreclosure of said mortgage, and your orators herewith attach certified transcript of said proceedings, relating to said judgment, to this, their cross-bill, and make the same a part hereof as "Exhibit A;" and your orators respectfully represent that the aforesaid transaction was a fraudulent and collusive act of the acting managers and attorneys of the said Columbia Straw Paper Company, with themselves as bondholders, in order to give their representatives, the trustees herein, the right to begin this foreclosure proceeding.

7. Your orators further respectfully represent that said Philo D. Beard, as president of said defendant company and a member of the board of directors, and the said Trebein, Church, Halliday,
 136 Frees, Higgins, Emanuel Stein, Brown and Heppenheimer, in violation of the act of the State of New Jersey, in which said defendant corporation is organized, loaned out of the treasury of

said defendant company to the said Emanuel Stein, the treasurer and a member of the board of directors and a stockholder in said company, in his own behalf and as their agent, the sum of \$114,940.31 to enable him to pay notes due by him to the owners of certain mills, as purchase-money of said mills, notwithstanding the fact that said mills had been sold by him to said corporation for the bonds and stock of said company as aforesaid; by which action, under said statute, said president and said board of directors, as aforesaid, are each, individually, liable to the defendant company herein for the full amount of said loan and the interest thereon; whereas, if said loan had not been made and said moneys taken out of the treasury as aforesaid, the said defendant company would have had sufficient money to meet all of its just obligations, due and owing, and these proceedings for foreclosure would have been prevented. And your orators further respectfully represent that each and every of the said parties last above named are the holders and owners of bonds sought to be foreclosed in this proceeding, or were such holders and owners at the time of the filing of the said bill of complaint.

8. Your orators further respectfully represent that in violation of their duties as directors and attorneys of said defendant company, said Beard, Trebein, Church, Halliday, Higgins, Stein, Brown, Heppenheimer, Guggenheimer & Untermeyer, Dupee, Judah, Willard & Wolf, combining and confederating to wreck the said defendant paper company and to defraud your orators as stockholders therein, have withdrawn from the treasury of the said defendant company, without reimbursing the same, large numbers of bonds and stocks, as hereinbefore more particularly set out, of the value of over \$300,000,000, all of which the said complainants now hold in trust for the said defendant paper company.

9. Your orators further show that the said board of directors and said firms of Dupee, Judah, Willard & Wolf and said Guggenheimer & Untermeyer, during the month of June, 1894, formed in connection with the owner of paper mills, other than those belonging to said defendant company, a corporation under the laws of New Jersey, known as the Paper Commission Company, the certificate of association being drawn by said firm of Guggenheimer & Untermeyer, by means of which all of the products of the mills of said defendant company and certain other paper mills were to be sold upon a commission; that said Beard became president, said

137 Stein treasurer and said Halliday the selling agent of said Paper Commission Company, as shown by a certified statement marked Exhibit B, filed herewith and made a part thereof; and that, as a result thereof, whereas, it cost said Columbia Straw Paper Company, during the six and one-half months prior to the formation of said Paper Commission Company, the sum of \$14,112.14 to sell twenty-three thousand eight hundred and sixty-three tons of paper, it cost said Columbia Straw Paper Company, during the six and one-half months succeeding the formation of said Paper Commission Company, the sum of \$53,244.41 (less \$12,000 paid back to it as its interest in said Paper Commission Company) to sell fifteen thousand four hundred and eighty-seven tons, being

an increase of over \$40,000 in the expense of selling eight thousand three hundred and seventy-six tons less of paper; and your orators further respectfully represent, that they are informed and believe, and upon such information and belief charge to be true, that said \$40,000 was divided among the said officers and attorneys of the said defendant Columbia Straw Paper Company; and that said officers and attorneys, complainants herein, as the holders and owners of bonds aforesaid, now hold the said \$40,000 in trust for the use and benefit of the said defendant Columbia Straw Paper Company. In confirmation whereof and in support of the allegations in the preceding paragraphs, your orators file herewith a copy of a report signed by said Philo D. Beard, as president, marked Exhibit C, and made a part hereof.

10. Your orators further respectfully represent, that since the filing of the original bill of complaint herein, to wit: on or about the twenty-second day of March, 1895, the board of directors of said defendant, Columbia Straw Paper Company, and said trustees and the holders and owners of said bonds alleged to be secured by said mortgage aforesaid, formulated a certain written agreement for the reorganization of said defendant paper company, and the same having been acted upon by said board of directors and said trustees under said mortgage, the same was submitted to the several owners and holders of bonds and of preferred and common stock of said defendant paper company for signature and ratification.

You orators further respectfully represent, that among other things in the said agreement it was provided: "As a condition precedent to the execution of this agreement by the bondholders, the president and officers and the majority of the directors of the company shall within ten days after the execution hereof by the first subscriber hereto, place their resignations in the hands of the trustee (the State

Trust Company, of the city of New York), which resignations
138 shall be and remain irrevocable and shall be under the absolute control of a majority of the bondholders who become parties to this agreement."

Your orators further respectfully represent that in said agreement it was also provided: "This agreement shall be of no force or effect and the same shall be deemed canceled as to all of the subscribers, without further action (*except that the control of the company and its affairs, granted under the preceding clause, shall be retained by the bondholders*, and all acts done under the said clause are ratified), and the moneys and securities deposited hereunder shall be returned by the trust company to the subscribers depositing the same, unless the same be fully executed by all the parties thereto on or before the first day of May, 1895."

Your orators further respectfully represent that said agreement was signed and subscribed by certain of the stockholders of said company as early as the twenty-second day of March, 1895, and that by reason of the signatures of said stockholders and the agreement of said president and officers and a majority of the board of directors set forth above, and the provisions of said written agreement, the control of said defendant company is placed in the hands of the

trustees (complainants herein) and holders of said bonds, and that the rights and interests of said defendant company in this litigation are entirely in the hands and under the control of said trustees and said bondholders, and have been ever since said twenty-second day of March, 1895.

11. Your orators further respectfully represent that all of the officers and directors of the said defendant paper company are large holders of the bonds sought to be foreclosed by the original bill of complaint filed herein, and have arranged their affairs in this regard so that it will be to their greater advantage to admit without defense the illegal and fraudulent mortgage and to permit the foreclosure of the same; and that by reason of the attitude of each and every of the said board of directors above named towards said defendant paper company and its stockholders, other than said board of directors and said Guggenheimer & Untermeyer, Dupee, Judah, Willard & Wolf and their said associates and confederates heretofore referred to, the said last-named parties, holding a majority of the common stock of said company; by reason of all of their previous acts as hereinbefore more particularly set out; and by reason of the fact that the said directors and officers have caused to be filed in this proceeding the answer of the said defendant paper company, in which all of the averments of the original bill of complaint are admitted to be true, saving and excepting only the fact as to whether

139 a sufficient number of bondholders have instructed and authorized said trustees to institute this suit, which fact the said answer neither admits nor denies; your orators respectfully represent that it would be useless to ask or demand the said directors and officers to take such steps in this proceeding, to set up for the defendant paper company all of its lawful defenses to the said bill of complaint and to secure for the said corporation all of the equities it is entitled to, by reason of their own fraudulent mismanagement of the said defendant company.

12. Your orators further respectfully represent that they are informed and believe, and upon such information and belief charge the same to be true, that said law firm of Guggenheimer & Untermeyer are the solicitors of the trustees, complainant herein, but not of record, and as such solicitors prepared the printed bill of complaint herein for the foreclosure of said mortgage; that law firm of Dupee, Judah, Willard & Wolf, who are solicitors of record for said trustees complainant herein, and said Beard and Stein, president and treasurer respectively of said defendant company, and said Solomon Marx, a holder of bonds, and also a recipient of forty shares of the preferred stock, and of eighty shares of common stock of said company, gratuitously and without consideration as aforesaid, well knowing the legal and equitable liability of themselves and their principals on their unpaid subscriptions to the capital stock of said company, for the purpose of preventing the enforcement of such liability against them and their principals have combined and confederated together; and since the filing of the bill of complaint herein, and since they have learned that your orators would file this cross-bill under leave of this honorable court, and

knowing that George P. Jones, the receiver heretofore appointed in this cause, is receiver only of the mortgaged premises herein, have caused proceedings to be instituted in the State of New Jersey to have said defendant company declared by the chancellor of said State under the statutes thereof, insolvent, and for the appointment of a receiver of all the assets and books of account of said company, and said firm of Guggenheimer & Untermyer drew the said petition and caused it to be signed and sworn to by said Solomon Marx, and thereupon caused it to be filed by other appearing solicitors before said chancellor, and said Beard and Stein, as directors of said company, under the provisions of said statutes, admitted before said chancellor at the hearing of said petition, the insolvency of said company, and thereupon on May 6th, 1895, said chancellor, not being informed as to said liability of said confederates on their unpaid subscriptions to the capital stock of said company, declared said company defendant to be insolvent, and appointed William

140 G. E. See, receiver of said company, with all the usual powers of a receiver, and your orators aver that at the time of said hearing of said proceedings all of said confederating parties had full knowledge of the restraining order and injunction granted by this court on the fourth day of May, 1895, and that the sole object of their obtaining the appointment of said receiver is to obtain possession of the books and papers of said company, in order to avoid the enforcement of the legal and equitable liability resting upon them by reason of their original subscriptions to the capital stock of defendant company being unpaid, and to prevent the receiver that may be appointed by this honorable court, upon the prayer of your orators, from gaining possession of the assets, books of accounts and papers of said defendant company, Columbia Straw Paper Company.

13. Your orators further respectfully represent that the receiver appointed herein on the twenty-fourth day of January, 1895, was appointed receiver of the mortgaged premises only, and since his appointment, acting under the direction of said firm of Dupee, Judah, Willard & Wolf, and of the firm of Herrick, Allen & Boyesen, attorneys in these proceedings for said defendant company, he has neither taken actual possession, nor entered actually into the operation of the property of said defendant corporation, but during all of said time has been subject to the instructions of the said board of directors, or the trustees herein, or their respective attorneys; that he has no actual or practical knowledge of the operation of paper mills, and that by reason of the premises it would be useless for your orators to ask or demand of him to take such steps to defend the rights and prosecute the equities of said defendant paper company, or of your orators as complainants herein.

Forasmuch therefore as your orators are without remedy in the premises except by filing this, their cross-bill, in the said proceedings commenced by the said board of directors, officers and their associates and confederates heretofore named, through their representatives the Northern Trust Company and Ovid B. Jameson, as trustees, against the said Columbia Straw Paper Company and your

orators; and to the end that the said Northern Trust Company, of Chicago, Illinois; Ovid B. Jameson, of Indianapolis, Indiana; the said Columbia Straw Paper Company; Philo D. Beard, of Buffalo, New York; Augustus P. Brown, of Fort Madison, Iowa; Elbridge Gilbert Church, of Sterling, Illinois; Charles A. Dupee, Adams Express building, Chicago, Illinois; James Flanagan, of 262 Tenth avenue, in New York city; Randolph Guggenheimer, 46 Wall street, New York city; John B. Halliday, of Chicago, Illinois; Richard T. Higgins, of Vandalia, Illinois; Wm. C. Heppenheimer, of Hoboken, New Jersey; Noble B. Judah, Adams Express building, 141 Chicago, Illinois; Solomon Marx, of 25 East 73d street, New York city; Thomas T. Ramsdell, of Buffalo, New York; Emanuel Stein, of Chicago, Illinois; Fred C. Trebein, of Trebeins, Greene county, Ohio; Samuel Isaac and Maurice Untermeyer, of 46 Wall street, New York city; Moses Weiman, 46 Wall street, New York city; M. L. Willard, Adams Express building, Chicago, Illinois; Henry M. Wolf, Adams Express building, Chicago, Illinois, who are hereby made parties defendant to this cross-bill, may, if they can, show why your orators should not have the relief hereby prayed, and may be required to make full, true and direct answer to the same, but not under oath, the answer under oath being hereby expressly waived; and that the said parties made defendants herein shall fully set forth, and truly and justly account for all of their actings and doings in respect to said transactions herein complained of, and especially in reference to the issue of the said alleged mortgage bonds; and that an account may be taken under the direction of this honorable court of each and all of said alleged mortgage bonds, and of all and every of said dealings and transactions of each and all of said defendants, as well in respect thereto as in reference to the issue of the said shares of stock, common and preferred, and that the same may be fully adjusted and the respective rights of your orators, and each and every of the other defendants herein ascertained; and that if, upon said accounting, anything shall appear to be due from any of the said defendants herein to said defendant, Columbia Straw Paper Company, or to your orators, that a decree may be entered for the payment of the same; your orators being ready and willing and hereby offer to pay to the defendant, Columbia Straw Paper Company, what if anything shall be due from your orators; and that some proper and practical person may in the meantime be appointed by this court as receiver in the place and stead of the said George P. Jones heretofore appointed on the application of the complainants herein; the said receiver, to be so appointed, directed to take possession of all the property and premises and the earnings and proceeds thereof with all such powers and authority, as may be required to preserve the said property and to secure the earnings thereof, together with all the property rights, powers, privileges now owned, possessed, held or controlled by the said Columbia Straw Paper Company, together with all books, moneys, assets, accounts, choses in action and property of every nature and kind belonging to or in possession of the said Columbia Straw Paper Company; and that an

order may be entered herein discharging or accepting the resignation of the said George P. Jones, and requiring him to account for and turn over to said receiver, thus appointed, all of the property of every kind and nature heretofore taken into his possession, as such receiver aforesaid; and that an injunction may be issued restraining the defendant, The Columbia Straw Paper Company and its officers, directors and agents, and the said Northern Trust Company and Ovid B. Jameson and each of them from interfering with, transferring, selling or disposing of any of the said property or premises and from taking possession of, seizing, attaching or attempting to sell, seize, attach or take possession of, either by judicial process or otherwise, the said property or premises, or any part thereof; and that your orators may have such other and further relief in the premises as equity may require and to your honors shall seem meet.

May it please your honors to grant unto your orators writs of subpoena, directed to the defendants, Columbia Straw Paper Company, The Northern Trust Company of Chicago, and to each and every one of the above-named parties, made defendants herein, commanding them and each of them on a day certain, and under a certain penalty to be therein specified, to appear and answer this cross-bill and to abide by and *and* perform such orders or decrees as to the court shall seem proper and shall be required by the principles of equity and good conscience.

THE UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division, } ss:

On this 17th day of May, A. D. 1895, before me personally appeared John B. Sherwood, a resident of the city of Indianapolis, in the State of Indiana, and made solemn oath that he is the agent of the cross-complainants in the foregoing cross-bill, and is authorized by them and each of them, to act on behalf of them, and each of them, and on their, and each of their behalf to make this affidavit; that he has read the foregoing cross-bill and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

JOHN B. SHERWOOD.

Subscribed and sworn to before me this 17th day of May, A. D. 1895.

[SEAL.]

E. G. LANCASTER,
Notary Public.

143

EXHIBIT A TO CROSS-BILL HEREIN.

STATE OF ILLINOIS, { ss:
Cook County, }

In Justice Court, before G. W. Underwood, Justice of the Peace.

JAMES FLANAGAN

vs.

COLUMBIA STRAW PAPER COMPANY, a Corporation } Assumpsit De-
Organized under the State Laws of New Jersey. } mand, \$200.

January 22, 1895.—Summons ordered and issued to Constable Cerf, returnable January 28, 1895, at 3 o'clock p. m., and on the twenty-second day of January, 1895, returned by him, "Served within writ on the within-named defendant by delivering a copy thereof to Philo D. Beard, president of said defendant company, in my county, January 22, 5 p. m." Plaintiff and defendant corporation by its president, Philo D. Beard, came into open court, and defendant corporation, by its president, Philo D. Beard, waives service of process and enters its appearance herein, and consents to go to immediate trial. One witness sworn and examined and six interest coupons notes introduced in evidence.

Whereupon it is considered by the court that the said plaintiff have and recover of the said defendant the sum of one hundred and eighty dollars and costs of suit, and judgment ordered and entered therefor.

January 22, 1895.—On oath of plaintiff's agent, execution ordered and issued to Constable Cerf.

STATE OF ILLINOIS, { ss:
Cook County, }

I, G. W. Underwood, a justice of the peace, in and for said county, do hereby certify, that the foregoing is a true and correct transcript of the judgment given by me in the above-entitled suit, and that said transcript, and the papers herewith accompanying, contain a full and perfect statement of all the proceedings before me, in the above-entitled cause.

In witness whereof, I have hereunto set my hand and seal this 30th day of April, 1895.

[SEAL.]

G. W. UNDERWOOD,
Justice of the Peace.

144

EXHIBIT B TO CROSS-BILL HEREIN.

Statement by Corporation Transacting Business in the State of New Jersey.

As required by an act of the legislature of New Jersey, approved March 8, 1877, the Paper Commission Company, a corporation organized under the laws of the State of New Jersey, renders the

following statement to be filed in the department of state of the State of New Jersey :

The principal office of the company is at Old Colony building, Chicago, Ill. The principal office of the company in New Jersey is at Hudson place and River street, Hoboken, N. J. The business of the company is that of selling straw paper.

At an election held at the organization meeting on the 27th day of March, 1894, the following-named persons were chosen directors, as noted. The seven directors then chosen having since resigned at various times and others elected, the present board is named below.

<i>Name.</i>	<i>P. O. Address.</i>	<i>Expiration of Term.</i>
Philo D. Beard.....	Chicago, Ill.....	First Tuesday, June, 1895
Emanuel Stein.....	Chicago, Ill.....	" " " 1895
Charles A. Chapin.....	Niles, Mich.....	" " " 1895
Anthony B. Trentman.....	Fort Wayne, Ind.	" " " 1895
James A. Hill.....	Chicago, Ill.....	" " " 1895
Peter Hinckle.....	Chicago, Ill.....	" " " 1895
Edgar A. Jacks.....	Niles, Mich.....	" " " 1895
Wilson P. Marchbank.....	Newark, N. J.....	" " " 1895
Richard T. Higgins.....	Vandalia, Ill.....	" " " 1895

The officers of the company are :

President, Philo D. Beard.

Vice-president, Charles A. Chapin.

Secretary, Emanuel Stein.

Treasurer, " "

Dated December 18, 1894.

The foregoing statement is correct and true.

PHILO D. BEARD, *President*.

Attest : EMANUEL STEIN, *Secretary*.

145 STATE OF NEW JERSEY, } ss :
Department of State,

I, Henry C. Kelsey, secretary of state of the State of New Jersey, do hereby certify that the foregoing is a true copy of reports of officers, directors, etc., of the Paper Commission Company, for the year 1894, as the same is taken from and compared with the original filed in my office on the twenty-sixth day of December, A. D. 1894, and now remaining on file therein.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Trenton, this twenty-ninth day of April, A. D. 1895.

[OFFICIAL SEAL.]

HENRY C. KELSEY,
Secretary of State.

EXHIBIT C TO CROSS-BILL HEREIN.

The company started in business in January, 1893, with thirteen (13) mills in its possession. Owing to difficulties in perfecting titles, etc., it was the latter part of March before all mills were in possession of the company.

In anticipation of the control of so large a number of mills by one corporation, dealers throughout the country sent in orders so rapidly that prices were advanced to about twenty-seven dollars (\$27) per ton, without effort on the part of the selling department of the company.

The outcome of this large purchasing on the part of the dealers was that almost every one in the trade was greatly overstocked. This condition was aggravated by the panic which followed, so that in July but few of the mills of the company were operated.

Not then appreciating that the panic and business depression would be so extended, the expenses at a considerable number of the mills, closed for lack of orders, were permitted to continue, only the ordinary labor being laid off.

The difficulty of securing good superintendents and operators was deemed, by the management, good reason for continuing these men on the pay-rolls.

The organization of a business, including some thirty-nine (39) mills, scattered over nine (9) different States, was naturally at the outset expensive. By systematic organization these expenses were materially reduced. It is the opinion of those qualified to judge that further reductions can be made without prejudice but to the decided advantage of the company.

It is believed that with the idle mills, which cannot be operated to advantage, disposed of, thus cutting off the expense of carrying them, and reductions in expense in every department to a point not to affect the business, that the company can earn enough to pay the interest on its bonds and dividends on its stock.

COLUMBIA STRAW PAPER COMPANY.
PHILO D. BEARD, *President*.

Chicago, Ill., March 12, 1895.

Statement from Accounts and Reports of Columbia Straw Paper Company Covering Period from Organization to December 31st, 1894, Twenty-three Months.

Total sales of paper—76,492 tons, net price, after deducting freights, allowances and shortages, per ton,	
\$22.77	\$1,741,560 41
Paper on hand Dec. 31, 1894, 441 tons at net price..	7,696 73
	<hr/>
	\$1,749,257 14
Cost of making same, expended for labor, straw, other supplies, insurance, taxes, fuel, and including \$45,826.83 for repairs, also including salaries of manager, division superintendents, traveling expenses, etc.	1,513,856 00
	<hr/>
	\$235,401 14

Discounts and allowances, which includes 2 per cent. discount for cash settlements and all allowances made in settlement of claims.....	\$44,393 84	
Expenses in carrying idle mill properties.	49,695 00	
Losses by fire and expenses caused by fire.	9,193 67	
		<hr/>
		\$103,282 51
Profit after charging all mili and direct expenditures.		\$132,118 63
Cost of selling the 76,492 tons of paper above men- tioned, amounted to 96 cents per ton... ..		75,727 08

The cost of selling this paper seems great; it is explained by the fact that 25 per cent. commission was paid the Paper Commission Company on all paper sold by it from June 10th to Dec. 31st, 1894, but the net price realized by the company per ton was but little less than for the paper sold for the period from Dec. 1st, 1893, to June 10th, 1894.

Net profit after deducting selling expenses.....		\$56,391 55
Other office and general expenses, includ- ing salaries of officers, clerical force, legal expenses, rent, advertising, post- age, telegraph, stationery, etc.....	\$54,123 69	
Other items of expense, pre- liminary expense, including New York accountants....	\$5,449 59	
Local taxes.....	715 21	
Bad debts.....	2,978 01	
Employers' liability insur- ance.....	423 41	
General stock and straw in- surance.....	1,421 24	
Paid New York auditors for auditing books to Dec. 1st, 1893.....	2,000 00	
		<hr/>
		\$12,987 46
Balance direct loss.....		\$10,719 60
		<hr/>
		\$67,111 15 \$67,111 15

147 To account for the company's loss and the depletion of its working capital, attention is called to the following prominent expenditures:

Direct loss, as above....	\$10,719 60
Amount expended for permanent improve- ments to the company's property.....	90,368 08

(This in addition to \$45,826.83 men-
tioned above as expended for repairs and
renewals.)

Amount paid on property-purchase notes.....	\$97,000 00
Amount paid as interest on \$185,000.....	17,940 31
	<hr/>
	\$114,940 31
Amount paid as interest on bonds.....	59,970 00
Amount paid as interest on borrowed money (other than mentioned above).. <hr/>	12,604 07 \$288,602 06

The following figures are given which will show, in part, the savings that can be effected in the future operations of company per year :

Estimate for future at present prices of paper it will net mill \$3.00 per ton :

On 50,000 tons per annum at \$3.00... .. \$150,000 00

Expenses to be deducted :

Estimated expenses for offices, manager and all other office charges, including bad debts..... 35,000 00

Interest on bonds \$115,000 00
60,000 00

\$55,000 00

leaving for dividends the sum of \$55,000.00.

The above figures are based on the present low prices of paper and on the supposition that the reorganization plan is accomplished, and the company has no embarrassing floating debt, and has a fair, active working capital.

Filed May 18, 1895.

S. W. BURNHAM, *Clerk.*

148 On the same day, to wit, the eighteenth day of May, 1895, there was filed in the clerk's office of said court the affidavit of John B. Sherwood, showing non-residence of certain defendants to cross-bill, which said affidavit is in the words and figures following, to wit :

Affidavit of J. B. Sherwood.

THE NORTHERN TRUST COMPANY and OVID B. Jameson, Trustees, Complainants,	} Bill. In Equity. 32614-832.
<i>vs.</i>	
THE COLUMBIA STRAW PAPER COMPANY, Defendant.	}

HARRY W. DICKERMAN ET AL., Complainants,	} Cross-bill.
<i>vs.</i>	
PHILO D. BEARD ET AL., Defendants.	}

STATE OF ILLINOIS, }
County of Cook, } ss.:

John B. Sherwood, being duly sworn, on oath deposes and says that the defendant to the cross-bill herein, Philo D. Beard, is a citizen and resident of the State of New York, residing at Buffalo, in said State; that the defendant to the cross-bill herein, Thomas T. Ramsdell, is a citizen and resident of the State of New York, residing at Buffalo, in said State; that the defendant, Ovid B. Jameson, is a citizen and resident of the State of Indiana, residing at Indianapolis, in said State; that the defendants to the cross-bill herein, Randolph Guggenheimer, Samuel Untermeyer, Isaac Untermeyer, Moses Weiman and Maurice Untermeyer, are citizens and residents of the State of New York, residing in the city of New York, with a place of business at No. 46 Wall street, in said city; that the defendant to the cross-bill herein, Augustus P. Brown, is a citizen and resident of the State of Iowa, residing at Fort Madison; that the defendant to the cross-bill herein, Fred. C. Trebein, is a citizen and resident of the State of Ohio, residing at Trebein, in Green county, in said State; that the defendant to the cross-bill herein, James Flannagan, is a citizen and resident of the State of New York, residing at 262 Tenth avenue, in the city of New York; that the defendant to the cross-bill herein, William C. Heppenheimer, is a citizen and resident of the State of New Jersey, residing at Hoboken, in said State; that the defendant to the cross-bill herein, Solomon Marx, is a citizen and resident of the State of New York, residing at No. 25 East 73d street, in New York city, in said State, and that said parties cannot be found within the northern district of Illinois.

JOHN B. SHERWOOD.

Subscribed and sworn to before me this 14th day of May, A. D. 1895.

[SEAL.]

EDWIN G. LANCASTER,
Notary Public.

(Endorsed :) Filed May 18, 1895. S. W. Burnham, clerk.

On the same day, to wit: the eighteenth day of May, 1895, a writ of subpoena issued out of the clerk's office, directed against Columbia Straw Paper Company, the Northern Trust Company of Chicago, to answer the cross-bill of complaint of Harry W. Dickerman *et al.*, which said subpoena, together with the memorandum thereto attached, and the marshal's return thereon endorsed, is in the words and figures following, to wit:

Subpœna on Cross-bill.

UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division, } ss:

THE UNITED STATES OF AMERICA:

To Columbia Straw Paper Company, the Northern Trust Company of Chicago, Greeting:

We command you, and every of you, that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in the northern division of said district, on the first Monday in the month of July next, to answer the cross-bill of complaint of Henry W. Dickerman, trustee, for the Second National Bank of Rockford, Illinois, Buckstaff Brothers Manufacturing Company, Henry S. Carroll for himself and the Clarksville Paper Company *et al.*, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

150 To the marshal of the northern district of Illinois to execute.

Witness, the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago, aforesaid, this 18th day of [SEAL.] May, in the year of our Lord one thousand eight hundred and ninety-five, and of our Independence the 119th year.

S. W. BURNHAM, *Clerk.*

Memorandum.

The above-named defendants are notified that unless they, and each of them, shall enter their appearance in the clerk's office of said court, at Chicago, aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

S. W. BURNHAM, *Clerk.*

Marshal's Return.

Endorsements.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } ss :

I have served this writ within my district in the following manner, to wit: Upon the Northern Trust Company of Chicago, on the 20th day of May, A. D. 1895, by delivering a true copy of the same to Arthur Heurtley, secretary of the aforesaid company; also upon the Columbia Straw Paper Company, on the 20th day of May, A. D. 1895, by delivering a true copy of the same to H. A. Brognard, assistant secretary of the Columbia Straw Paper Company. The presidents of the aforesaid companies are not found in my district.

J. W. ARNOLD,

U. S. Marshal.

GEO. N. JONES, *Deputy.*

(Endorsed :) Filed May 27, 1895. S. W. Burnham, clerk.

151 On the same day, to wit, the eighteenth day of May, 1895, in the December term of said court, 1894, in the record of proceedings in said entitled cause before the Hon. John W. Showalter, circuit judge, appears the following entry, to wit:

Order: Rule to Plead, May 18, 1895.

Entry.

THE NORTHERN TRUST COMPANY and OVID B.	} In Chancery. Bill.
Jameson, Trustees,	
vs.	
THE COLUMBIA STRAW PAPER COMPANY	} 23614.
and	
HARRY W. DICKERMAN ET AL.	
vs.	} Cross-bill.
PHILO D. BEARD ET AL.	

On motion of Bluford Wilson and Otto Gresham, counsel for Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois, Buckstaff Brothers Manufacturing Company, Henry S. Carroll, for himself and the Clarksville Paper Company, F. J. Diem, Freeman Graham, Jr., Julius Graham, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, plaintiffs herein, and it appearing to the court that the defendants, Philo D. Beard, Thomas T. Ramsdell, Ovid B. Jameson, Randolph Guggenheimer, Samuel Untermeyer, Isaac Untermeyer, Moses Weiman, Maurice Untermeyer, Augustus P. Brown, Fred C. Trebein, James Flannagan, William C. Heppenheimer, and Solomon Marx, are not inhabitants

of, nor are found within this district, nor have voluntarily entered their appearance herein.

It is hereby ordered that the said defendants, Philo D. Beard, Thomas T. Ramsdell, Ovid B. Jameson, Randolph Guggenheimer, Samuel Untermeyer, Isaac Untermeyer, Moses Weiman, Maurice Untermeyer, Augustus P. Brown, Fred C. Trebeian, James Flannagan, William C. Heppenheimer and Solomon Marx, appear, plead, answer or demur to the said cross-bill filed by Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois, Buckstaff Brothers Manufacturing Company, Henry S. Carroll, for himself and Clarksville Paper Company, F. J. Diem, Freeman Graham, Jr., Julius Graham, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, plaintiffs herein, by the first Monday of July, A. D. 1895, and in default thereof, that the court will proceed to the hearing and adjudication of said cause, and that a copy of this order be served upon said defendants.

152 Afterwards, to wit, on the twenty-third day of May, 1895, a writ of subpoena issued out of the clerk's office of said court directed to the marshal of the southern district of Illinois to execute, which said writ, together with the memorandum thereto attached and the marshal's return thereon indorsed is in the words and figures following, to wit:

Subpœna on Cross-bill.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ss:

THE UNITED STATES OF AMERICA:

To Richard T. Higgins, impleaded with the Columbia Straw Paper Company, *et al.*, Greeting:

We command you and every of you, that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in the northern division of said district on the first Monday in the month of July next, to answer the cross-bill of complaint of Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois; Buckstaff Brothers Manufacturing Company; Henry S. Carroll, for himself; and the Clarksville Paper Company *et al.*, heretofore.

Filed in the clerk's office of said court in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the southern district of Illinois to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago, aforesaid, this 23d day of

[SEAL.] May, in the year of our Lord one thousand eight hundred and ninety-five, and of our Independence the 119th year.

S. W. BURNHAM, Clerk.

Memorandum.

The above-named defendant is notified that unless he shall enter his appearance in the clerk's office of said court, at Chicago, aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against him, as confessed, and a decree entered accordingly.

S. W. BURNHAM, *Clerk.*

Return to Subpœna.

Endorsements.

I have served the within writ within my district in the following manner, to wit: Upon Richard T. Higgins, therein named, on the 27th day of May, A. D. 1895, at Vandalia.

W. B. BRINTON,

U. S. Marshal,

By E. W. EVERHART, *Deputy.*

(Endorsed :) Filed May 30, 1895. S. W. Burnham, clerk.

154 On the same day, to wit, the twenty-third day of May, 1895, a writ of subpœna issued out of the clerk's office, directed to the marshal of the northern district of Illinois to execute, which said writ together with the memorandum thereto attached, and the marshal's return thereon endorsed is in the words and figures following, to wit:

Subpœna on Cross-bill.

UNITED STATES OF AMERICA, } ss :
Northern District of Illinois, Northern Division, }

THE UNITED STATES OF AMERICA :

To Emanuel Stein, E. Gilbert Church, impleaded with the Columbia Straw Paper Company, *et al.*, Greeting :

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in the northern division of said district, on the first Monday in the month of July next, to answer the cross-bill of complaint of Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois, Backstaff Brothers Manufacturing Company, Henry S. Carroll for himself and the Clarksville Paper Company *et al.*, heretofore filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness, the Hon. Melville W. Fuller, Chief Justice of the United

States of America, at Chicago aforesaid, this 23d day of May, in the year of our Lord one thousand eight hundred and ninety-five, and of our Independence the 119 year.

S. W. BURNHAM, *Clerk*.

Memorandum.

The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

S. W. BURNHAM, *Clerk*.

155

Marshal's Return.

Endorsements.

I have served the within writ within my district in the following manner, to wit: Upon Emanuel Stein therein named on the 27th day of May, A. D. 1895, and upon the following-named defendant, not having been able to find him to serve personally, by leaving a true copy for him at his usual place of abode, with an adult person and a member of his family, to wit:

Upon E. Gilbert Church, on the 3d day of June, A. D. 1895, with Mrs. E. G. Church.

JOHN W. ARNOLD,
U. S. Marshal,
By GEO. N. JONES, *Deputy.*

(Endorsed :) Filed June 4, 1895. S. W. Burnham, clerk.

Afterwards, to wit, on the third day of June, 1895, came the Northern Trust Company and Ovid B. Jameson, trustees, and filed in the clerk's office of said court their replication to the answer of Harry W. Dickerman *et al.* to the original bill of complaint; which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } 38 :

In the Circuit Court of the United States for the Northern District
 of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and OVID B. Jameson, as Trustees, Complainants, vs. COLUMBIA STRAW PAPER COMPANY, Defendant.	}	In Chancery.
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The replication of the Northern Trust Company and Ovid B. Jameson, as trustees, to the joint answer of Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois; Buckstaff Brothers Manufacturing Company, Henry S. Carroll, for himself and the Clarksville Paper Company; F. J. Diem, Free-
 156 man Graham, Jr., Julius Graham, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, defendants to the bill of complaint.

These repliants, The Northern Trust Company and Ovid B. Jameson, as trustees, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants, for replication thereunto say:

That they do and will aver, maintain and prove their said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and insufficient in law to be replied unto by these repliants, without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied is true, all which matters and things these repliants are ready to aver, maintain and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

DUPEE, JUDAH, WILLARD & WOLF,
Solicitors for Complainants and of Counsel,
 185 Dearborn Street, Chicago.

(Endorsed :) Filed June 3, 1895. S. W. Burnham, clerk.

157 Afterwards, to wit: on the twenty-fourth day of June, 1895, a writ of subpœna issued out of the clerk's office against Charles A. Dupee, Noble B. Judah *et al.* directed to the marshal of said district to execute, which said writ, together with the memorandum thereto attached and the return of the marshal thereon endorsed, is in the words and figures following, to wit:

Subpœna on Cross-bill.

UNITED STATES OF AMERICA,
 Northern District of Illinois, Northern Division, } ss:

THE UNITED STATES OF AMERICA:

To Charles A. Dupee, Noble B. Judah, M. L. Willard, and Henry M. Wolf, impleaded with the Northern Trust Company *et al.*, Greeting:

We command you and every of you, that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in the northern division of said district, on the first Monday in the month of August next, to answer the cross-bill of complaint of Harry W. Dickerman, as trustee of the Second National Bank of Rockford, Illinois, *et al.*, heretofore filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago aforesaid, this 24th day of June, in the year of our Lord one thousand eight hundred and ninety-five, and of our Independence the 119th year.

[SEAL.]

S. W. BURNHAM, *Clerk.*

MEMORANDUM.—The above defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

S. W. BURNHAM, *Clerk.*

158

Marshal's Return.

I have served the within writ within my district in the following manner, to wit: Upon Charles A. Dupee therein named on the 25th day of June, A. D. 1895, also upon Noble B. Judah therein named on the 24th day of June, A. D. 1895, also upon M. L. Willard therein named on the 25th day of June, A. D. 1895, also upon Henry M. Wolf therein named on the 24th day of June, A. D. 1895, by personally delivering to each of them a true copy of the same on the aforesaid days.

J. W. ARNOLD,
U. S. Marshal,
 By GEO. N. JONES, *Deputy.*

(Endorsed:) Filed June 25, 1895. S. W. Burnham, clerk.

Afterwards, to wit: on the twenty-ninth day of June, 1895, came The Northern Trust Company, Ovid B. Jameson, Charles A. Dupee, Noble B. Judah *et al.*, and entered their appearance in said cause in words and figures following, to wit:

Appearance of Northern Trust Co. to Cross-bill.

Appearance of Northern Trust Company *et al.* as defendants to cross-bill.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ^{ss}:

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY ET AL., Trustees,	} In Chancery.
<i>vs.</i>	
COLUMBIA STRAW PAPER COMPANY ET AL.	
 HARRY W. DICKERMAN, Trustee, ET AL.	} Cross-bill.
<i>vs.</i>	
THE NORTHERN TRUSTEE COMPANY ET AL.	

We hereby enter the appearance of The Northern Trust Company, Ovid B. Jameson, Charles A. Dupee, Noble B. Judah, Monroe L. Willard, Henry M. Wolf, Salomon Marx, James Flanagan, Randolph Guggenheimer, Samuel Untermeyer, Maurice Untermeyer and Moses Weinman as cross-defendants in said cross-bill in the above-entitled cause.

DUPEE, JUDAH, WILLARD & WOLF,
Solicitors for said Cross-defendants.

(Endorsed :) Filed June 29, 1895. S. W. Burnham, clerk.

159 On the same day, to wit, the twenty-ninth day of June, 1895, came Charles A. Dupee, Noble B. Judah, Monroe L. Willard and Henry M. Wolf, and filed in the clerk's office of said court their joint and several answer to the cross-bill of Harry W. Dickerman *et al.*, which said answer is in the words and figures following, to wit:

Answer of Dupee et al. to Cross-bill.

THE NORTHERN TRUST COMPANY and Ovid B. Jameson, Trustees, Complain- ants,	} In Equity. Gen. No., 32614; Term No., 832.
<i>v8.</i> THE COLUMBIA STRAW PAPER COMPANY, Defendants.	

The joint and several answers of Charles A. Dupee, Noble B. Judah, Monroe L. Willard, and Henry M. Wolf, four of the cross-defendants, to the cross-bill of Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois; Buckstaff Brothers Manufacturing Company, Henry S. Carroll, for himself and the Clarksville Paper Company; Fred J. Diem, Freeman Graham, Jr., Julius Graham, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, defendants.

These cross-defendants respectively, now and at all times hereafter, saving to themselves all and all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said cross-bill contained for answers thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answering, say:

That they do not know whether said cross-complainants are the owners of shares of stock of the Columbia Straw Paper Company, as set forth in said bill of complaint, or of any stock in said company, and they therefore leave cross-complainants to make such proof thereof as they are advised is material or necessary.

These defendants, further answering, say that as they are informed and believe said cross-complainants as such stockholders did participate in or acquiesce in all the acts done by other stockholders in said company and in said cross-bill complained of so far as said acts occurred, or that they are transferees of such participating or acquiescing stockholders.

160 Further answering, these defendants say that it is true that said Northern Trust Company and Ovid B. Jameson, on or about the 24th day of January, 1895, exhibited in this honorable court their bill of complaint against said Columbia Straw Paper Company to foreclose a mortgage as in said cross-bill described, and that answers have been filed as in said cross-bill alleged.

These defendants, further answering, deny that these defendants, or any of them, in the summer of 1892, or at any time, entered into an agreement with any of the parties named in clause 3 of said cross-bill whereby options or executory contracts for the purchase of certain paper-mill plants were to be obtained, if possible on the basis of the payment of so much cash and the balance in the stock of a corporation to be by them formed of said mills and they deny

that in securing said options representations were made to the various mill-owners that it was the intention and expectation of the said promoters to secure the control of about seventy mills, and they deny that the corporation so to be formed would be capitalized at \$3,000,000 of common and \$1,000,000 of preferred stock, which said stock was to be issued at par in part payment for said mills at the option prices so obtained until the same was exhausted, and that in such a contingency the corporation so to be organized was to have the power to issue \$1,000,000 of its bonds to complete the payment for said mills, and these defendants further deny that they, or any of them, at any time acted as, or were promoters of, said company, and engaged in any way in procuring or securing options upon such mills or any of them, on any terms whatever, and they deny that they ever made any representations in regard to such options.

These defendants, further answering, deny that after options had been obtained upon thirty-nine of said mills in the name of said Beard and Ramsdell, these defendants, or any of them, met with the parties named in clause 3 of said cross-bill, and decided that it would be necessary to provide \$1,000,000 to purchase said property and furnish the running capital.

These defendants, further answering, say that they do not know whether said Guggenheimer and Untermeyer submitted to their friends in New York named upon page 7 of said cross-bill, or to any of them, any plan whatever at any time, and that they are ignorant whether said persons thereupon appointed said Guggenheimer and Untermeyer their agents to act for them in securing bonds and stock of said company, or delivered to them any money, and these defendants say that they have no knowledge as to the transactions, if any, between said Guggenheimer and Untermeyer and their said alleged friends.

These defendants further answering say, that they have no knowledge whether said Philo D. Beard submitted to his alleged friends named upon pages 8 and 9 of said cross-bill, the plan that had been agreed upon by said alleged original promoters, or any plan, or whether said parties appointed said Philo D. Beard their agent, as in said cross-bill of complaint alleged.

These defendants, further answering, deny that at the said time, or at any time, the said law firm of Dupee, Judah, Willard & Wolf, acting for themselves, and as the agent of certain of their friends in Chicago, together with the said Stein, agreed to purchase for themselves and as such agent 77 bonds of said Columbia Straw Paper Company for the sum of \$77,000 upon receiving a gratuity of 1,493 full-paid shares of preferred stock, and 5,211 full-paid shares of common stock of the said company so to be organized, and these defendants say that the members of said firm of Dupee, Judah, Willard & Wolf, each purchased \$5,000 of the bonds of said company as hereinafter set forth, and that their said purchases had no connection whatever with any purchase of bonds by said Stein or by their alleged friends, or with any other person.

These defendants further answering, say that they do not know whether said John B. Halladay at the same time agreed to purchase

for himself bonds of said company as in said cross-bill alleged, nor do they know whether said Fred C. Trebein at the same time agreed to purchase for himself bonds as in said cross-bill of complaint alleged.

These defendants, further answering, deny that after the arrangements alleged in said cross-bill for procuring the bonds and gratuitous stock of said Columbia Straw Paper Company, or at any time all or any of the said parties named in said cross-bill paid the respective sums of money in said cross-bill mentioned, or any sum, into the hands of the said Henry M. Wolf, as trustee, for the purpose of applying the same at the proper time to the purchase of said mills.

These defendants, further answering, on information and belief deny that the giving of stock of said Columbia Straw Paper Company with said bonds was kept a secret from said cross-complainants, or from any owners of mills who had agreed under their options to sell said mills to said Beard and Ramsdell.

162 These defendants, further answering, on information and belief admit that said Beard and Ramsdell assigned, transferred and set over all their interest in and to options for the purchase of such mills to said Emanuel Stein, but upon what consideration these defendants do not know, but these defendants deny that such transfer was made for the purpose of evading the provisions of the statutes of New Jersey concerning corporations, as in said cross-bill alleged. These defendants are informed and believe that said Stein accepted in writing said options some time during the fall of 1892. They admit that said firm of Dupree, Judah, Willard & Wolf examined the titles to said properties and gave written opinions thereon; that said firm of Guggenheimer and Untermeyer prepared articles of incorporation for the formation of the Columbia Straw Paper Company; that said articles of incorporation were duly executed as alleged in said cross-bill, and filed in the office of the secretary of the State of New Jersey as in said cross-bill alleged.

These defendants, further answering, deny that immediately upon the filing of said articles of incorporation, the stockholders of said company elected as directors of said company the said Philo D. Beard, Fred C. Trebein, E. Gilbert Church, J. B. Halladay, B. M. Frees, Richard T. Higgins, Emanuel Stein, Augustus P. Brown and William C. Heppenheimer, and these defendants allege that none of the parties above named were then elected as such directors except said Philo D. Beard and said William C. Heppenheimer, and these defendants deny that thereupon said board of directors met in the office of Guggenheimer & Untermeyer as alleged, and appointed attorneys for said company as in said bill alleged.

These defendants, further answering, admit that said Emanuel Stein, on or about the 14th day of December, 1892, made a written proposition to said board of directors to sell and transfer to said company the properties described in the original bill of foreclosure upon the terms in said cross-bill named, and these defendants deny that said Emanuel Stein was at that time one of the directors of

said company, or that he in any way acted for these defendants, or any or either of them.

These defendants, further answering, say that they did not, nor did any or either of them, have any connection with or interest in the said offer or proposition by said Stein to said Columbia Straw Paper Company or its directors, and that they neither took any part therein or therewith, and these defendants further answering say, that at the time of said offer by said Stein these defendants had not, nor had any of them, any personal knowledge as to the
163 value of the said properties so offered by said Stein, or whether there was, or was to be, any surplus stock of said company, and they deny that they were ever parties to any arrangements for any division of any surplus stock, and they say that they never shared in any division of any surplus stock either for themselves, or for any one else, and these defendants say that they had no knowledge or information and no reason to believe, and they therefore deny that the directors of said company overvalued said properties, or had any intent to or did defraud any one.

These defendants, further answering, deny that at the time of the purchase of said paper mill plants from said Stein by said Columbia Straw Paper Company these defendants, or either of them, had full or any knowledge of the original or any agreement for the taking of options from said mill-owners, and they deny that they, or either of them, had any knowledge that said assignment from said Beard and Ramsdell to said Stein was without consideration, or was intended as a means to evade the provisions of the statutes of New Jersey; and they deny that any plan was agreed upon in regard thereto between these defendants, or any of them, with any of the parties named in said cross-bill of complaint.

These defendants, further answering, deny that the money necessary for the cash purchase of said paper mill plants and for the running capital of the corporation to be formed, or any of it was placed in the hands of said Henry M. Wolf as trustee.

These defendants, further answering, deny that said Stein accepted said options at the instance or upon the request of these defendants, or any of them, and they deny that they, or any of them, knew that any of said directors were elected for the purpose of effecting and accepting said proposition of said Stein for the sale of said paper mill plants, and they deny that they, or either of them, had any knowledge that the terms of or anything connected with said purchase were to be kept secret from any owners of said mill plants, or that any matter connected with the whole transaction was to be kept secret from anybody.

These defendants, further answering, say that they have no knowledge other than is shown by the records of said company as to any purchase by said Beard of bonds and stock of said Columbia Straw Paper Company, and these defendants have no knowledge as to any purchase of such bonds and stocks by said alleged confederates of said Beard, nor do they know whether they now hold, or at the time
of filing the original bill herein, such bonds or stock, but these
164 defendants deny that it is claimed by the Northern Trust Company and Ovid B. Jameson, trustees, in the original bill of

foreclosure that there is due to the said Beard and his said confederates as holders and owners of bonds of said company the sum of \$238,000 or any other sum.

These defendants, further answering, say that they have no knowledge as to said alleged indebtedness of said Board and his alleged confederates to said Columbia Straw Paper Company, and they say that they have no knowledge, and they deny on information and belief that any property or assets of any kind were illegally or fraudulently withdrawn from the treasury of the Columbia Straw Paper Company by said parties.

These defendants, further answering, deny that they have any knowledge, more than the records of said company disclose, as to the alleged purchase by the law firm of Guggenheimer & Untermeyer for themselves, or as agents for other parties, of bonds and stock of said Columbia Straw Paper Company, and they say they have no knowledge as to what stock or bonds of said company are now held by said Guggenheimer & Untermeyer, for themselves or for their alleged principals and confederates, and they have no knowledge of any indebtedness of said Guggenheimer & Untermeyer, or said other parties, to said Columbia Straw Paper Company, and they do not know, and on information and belief deny that any shares of stock of said Columbia Straw Paper Company have been illegally and fraudulently, or otherwise, withdrawn from the treasury of the said Columbia Straw Paper Company.

These defendants, further answering, deny that the said Stein and the said law firm of Dupee, Judah, Willard & Wolf, for themselves, or as agents for any one, received from said Stein in pursuance of said agreement 77 of said bonds sought to be foreclosed in this cause, and they deny that they received as gratuity, without any consideration therefor, 1,493 full-paid shares of preferred stock and 5,211 full-paid shares of common stock of said company in the manner and form alleged in said cross-bill of complaint. And they deny that the said Stein, the said Dupee, Judah, Willard & Wolf and their alleged confederates are still the owners and holders of such bonds and stock, or were such holders and owners at the time of the beginning of this foreclosure proceeding; and they deny that it is claimed by the Northern Trust Company and Ovid B. Jamieson, trustees, in the original bill of foreclosure herein that there is due to the said Stein and the said Dupee, Judah, Willard & Wolf and their confederates, as holders and owners of said bonds afore-

165 said, the sum of \$77,000, or any other sum, and they deny that the firm of Dupee, Judah, Willard & Wolf or these defendants, or any of them, are now indebted to and hold as trustees for the Columbia Straw Paper Company the sum of \$149,300 or \$521,100, or any other sum; and they deny that they, or either of them, have illegally and fraudulently or otherwise, withdrawn any stocks or bonds, or money, or property, or anything else, from the treasury of said Columbia Straw Paper Company.

These defendants, further answering, say, on information and belief, that the said Philo D. Beard, as president of the Columbia Straw Paper Company, on or about the 17th of May, 1893, caused

to be filed with the secretary of state a certificate verified by him, under oath, as alleged in said cross-bill, and these defendants in like manner aver that in point of fact the stock of said company has been fully paid, either in money or property, as required by the statutes of the State of New Jersey.

These defendants, further answering, say that they do not know whether the persons named on page 19 of said cross-bill held the controlling interest in said company at the time alleged in said cross-bill, but these defendants deny that they, or either of them took any part in the election of said board of directors of the Columbia Straw Paper Company in December, 1892, and they deny that at that time they owned any stock in said company, and these defendants say that they have no knowledge that at the time of the filing of the original bill herein the then board of directors of said Columbia Straw Paper Company were acting in a manner destructive to the corporation, and for and on behalf of their own interests.

And these defendants, further answering, deny that the execution of said mortgage by the Columbia Straw Paper Company, as alleged in paragraph 3 of the bill of complaint herein, was fraudulent and in violation of the rights of the stockholders, or any of them, of the Columbia Straw Paper Company, and they deny that said mortgage and the bonds issued thereunder were without consideration to said defendant company, and deny that they were of no benefit thereto.

These defendants, further answering, deny that any provisions of said mortgage or deed of trust of said Columbia Straw Paper Company were corrupt, usurious, unlawful or void.

These defendants, further answering, deny that said Philo D. Beard, as president of said company, and said board of directors acting under and pursuant to the advice of said Dupee, Judah,

Willard & Wolf and their associates, Guggenheimer & Untermeyer, attorneys of said company, neglected and refused to pay and discharge six interest coupons on the bonds of James Flanagan, a resident of the city of New York, in order that suit might be instituted thereon; and these defendants say that at said time the said firm of Dupee, Judah, Willard & Wolf were not the attorneys of said Columbia Straw Paper Company, and were not associated with the said firm of Guggenheimer & Untermeyer, nor did they act for said Flanagan in said suit, and they further say that the interest coupons on said bonds of James Flanagan had been, in common with the other coupons upon the bonds of said company, due and unpaid since June 1, 1894, and for about eight months prior to the entry of said judgment.

These defendants, further answering, say that on January 22, 1895, said Columbia Straw Paper Company was without funds to discharge the coupons due on its bonds on the first day of June and the first day of December previous thereto, amounting, exclusive of interest thereon, to \$60,000, and was without resources with which to pay taxes, insurance, labor, materials, supplies, water power, rent, and the other accrued and long past-due indebtedness of said company, and by reason thereof the foreclosure of said mortgage

became unavoidable, and that abundant legal reasons existed for and justified such foreclosure wholly independent of the entry of said judgment.

These defendants, further answering, say that is not true that said Dupee, Judah, Willard & Wolf, on behalf of the trustees under said mortgage, filed in this court a printed bill of complaint prepared by said firm of Guggenheimer & Untermeyer, in the city of New York, and they say that the bill of complaint herein was prepared by these defendants in the city of Chicago, and that neither the same nor any copy thereof was ever seen by said firm of Guggenheimer & Untermeyer until some time after the said bill was filed in this court.

These defendants, further answering, say that they have no knowledge that said Philo D. Beard, as president of said Columbia Straw Paper Company, and a member of its board of directors, and the other persons named in clause 7 of said cross-bill of complaint loaned out of the treasury of said company to the said Emanuel Stein the sum of \$114,940.31, as alleged in said cross-bill of complaint.

These defendants, further answering, say that they have no knowledge that any of the persons or firms named in said clause 8 of said cross-bill of complaint have withdrawn from the treasury of said Columbia Straw Paper Company, without reimbursing the same, any bonds or stocks whatever, and these defendants say that 167 they or either of them, have ever withdrawn anything from the treasury of said company, nor have they combined or confederated with any one as stated in clause 8 of said cross-bill.

These defendants, further answering, deny that they, or either of them, either by themselves or in connection with any other persons, formed a corporation known as the Paper Commission Company, and they say that these defendants never had any connection with the said Paper Commission Company, except that they from time to time acted as its attorneys for some time during and after its organization, in certain matters. And these defendants deny that they, or either of them, at any time received anything more from said Paper Commission Company than a part of a reasonable compensation for legal services rendered by them to said company. And these defendants say they have no knowledge as to the expenses of said Paper Commission Company or said Columbia Straw Paper Company in regard to the sale of paper.

These defendants, further answering, say that they have no knowledge whether the agreement referred to in clause 10 of said cross-bill of complaint was signed by the stockholders of said Columbia Straw Paper Company, and these defendants deny that the rights and interests of said Columbia Straw Paper Company in this litigation are entirely in the hands and under the control of said trustees and said bondholders or have been since the 22d day of March, 1895. And these defendants say that said trustees never became parties to such agreement or acted thereon.

These defendants further say that they own only the amount of stock in said Columbia Straw Paper Company which is hereinafter

set forth; that in the control and use of said stock there are not and never have been associated with other persons than themselves. These defendants deny that said Guggenheimer & Untermeyer are, or at any time have been, solicitors for said trustees, either of record or otherwise, or in this action or any other matter.

These defendants, further answering, deny that George P. Jones, the receiver heretofore appointed in this cause, is receiver only of the mortgaged premises or lands in the original bill described, but they say he is receiver of all assets covered by said mortgage.

These defendants, further answering, say that they have had no connection with and have no personal knowledge of the proceedings in the State of New Jersey alleged in said paragraph 12 of said cross-bill of complaint, but they are informed and believe that proceedings were had which resulted in the appointment of a receiver of said company, in said State of New Jersey. And these defendants say that they have no knowledge that the object sought in obtaining the appointment of said receiver was to obtain possession of the books and papers of said Columbia Straw Paper Company in order to avoid the enforcement of any liability or for any other reason.

These defendants, further answering, deny that said receiver herein has acted under the direction of said firm of Herrick, Allen & Boyesen, attorneys in these proceedings for said Columbia Straw Paper Company, and they deny that he has been subject to the instruction of the board of directors of said company or of the trustees herein. These defendants admit that said receiver has no actual or practical knowledge of the manufacture of paper, and they aver that such knowledge is in no respect necessary. And these defendants aver that said receiver has taken actual possession of the property included in said mortgage and has acted under the direction of the court in regard thereto.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they, or either of them, are by the said bill charged.

These defendants, further answering, say that in the summer of 1892 the law firm of which they are members was employed by Philo D. Beard to assist in the organization of said company, and shortly afterwards to examine the titles to the property described in said mortgage; that in pursuance of such employment they did examine all the titles to said property, such titles being exceedingly complicated, and being about forty mill plants located in nine or ten different States; that in the performance of said work they had to become acquainted with and carefully examine the conveyancing laws of such States; that many objections existed to the titles which afterwards had to be corrected; that many interviews and much correspondence with the respective mill-owners and others became necessary in regard thereto; that several members of said firm and its entire office force, assisted by other attorneys, were occupied for many months in the performance of said duties and other duties connected with the employment of the said firm as such attorneys; that their services upon a cash basis in regard thereto, based upon

customary fees, were worth at least \$50,000; that for such services they were paid \$2,000 in cash, \$6,000 in the bonds of said company and 16 shares of the preferred stock and 332 shares of the common stock of said Columbia Straw Paper Company; that they did not receive said bonds and stock or any part thereof from said Columbia Straw Paper Company but from parties to whom said bonds and stock certificates had been issued by said company; that at the time of the receipt of said bonds and stock certificates by said firm each of these defendants believed that said bonds and stock had been issued in good faith by said company, and that said bonds, as well as said stock, had been fully paid as they purported to be.

These defendants, further answering, say that about March, 1893, each of them purchased 5 bonds of said Columbia Straw Paper Company from said Stein and therewith and as a part of said purchase acquired 20 shares of the common stock and 10 shares of the preferred stock of said company, and each of these defendants paid therefor the sum of \$5,000 in cash together with interest; that about the time of their purchase of said bonds the firm composed of these defendants negotiated sales of certain bonds and stock of said Columbia Straw Paper Company to other parties for owners thereof and received from such owners therefor 62 shares of the common stock of said Columbia Straw Paper Company; that the aforesaid bonds and stock are all the bonds and stock of said Columbia Straw Paper Company which these defendants, or the law firm composed of these defendants, now own or have ever owned in their own right; that at the time and times said stock and bonds came into possession of these defendants they believed and still believe that said bonds and stock had been fully paid, and that the parties from whom they received them had good title thereto and good right to dispose of them; that long before the commencement of the foreclosure proceedings herein a portion of said bonds and stocks were disposed of by these defendants or some of them.

These defendants, further answering, say that as to how said Columbia Straw Paper Company should be organized, how many mill plants it should acquire, what should be the amount of its capital stock and its bonds, where the company should be incorporated, whether it should convey its stock or bonds, any part thereof, for the mill properties it acquired, were matters about which these defendants were not consulted, and in which they had no part, and which were all determined before these defendants had any knowledge of any efforts by any one to organize said corporation; that in connection with the organization of said company and its purchase of its properties, these defendants acted solely as attorneys employed to aid in carrying into effect that which had been previously determined upon by their principals and under their directions.

170 These defendants, further answering, say, that when, or soon after the time they were first called upon to act as attorneys in the premises, and before they became either bondholders or stockholders in said Columbia Straw Paper Company, they were

informed by parties in interest that the daily productive capacity of the mills purchased, or to be purchased, was about 339 tons; that the product was of staple commercial value; that the then yearly consumption in the country of the product manufactured by the mills was 90,000 tons, and was increasing at the rate of about 10,000 tons per annum; that the mills purchased, from their location, their proximity to straw-producing regions, and the consequent cheapness of manufacture, would control most of the market; that they could probably sell 90,000 tons per annum; that the paper had been manufactured at \$18 per ton by corporations, and that in this price was reckoned all the salaries of officers; that by saving in salaries, economy in railroad transportation, buying to advantage, etc., the cost price could be reduced to about \$16; that the average sale price for nine years had been 26.83; that for 1891 the sale price was \$30 per ton; that even calling the cost of production \$18, and the selling price \$26, the profits upon 90,000 tons would be \$720,000 per annum; that this would provide a sinking fund of \$110,000 per annum, and pay \$60,000 interest upon \$1,000,000 bonds, \$80,000 upon \$1,000,000 preferred stock, and leave \$470,000 to apply on \$3,000,000 common stock, which would be upwards of 15½ per cent.; that should the sales be but 80,000 tons yearly, and the sale price but \$26 per ton, the amount of profit would be \$480,000 per year, which would put into the sinking fund \$110,000 per annum, pay 6 per cent. on \$1,000,000 bonds 8 per cent. on \$1,000,000 preferred stock, and more than 6 per cent. upon \$3,000,000 common stock.

The attention of defendants was particularly called to the fact that the stock of the American Straw Board Company had sold above \$120 per share, and defendants were told that the Columbia Straw Paper Company would be stocked on a much better financial basis than said American Straw Board Company, and that its stock ought relatively to sell higher in the market than that of said American Straw Board Company. These defendants believed in and relied on these representations, and accordingly received stock and bonds of said company in payment for their services, and afterwards invested money in the purchase of stock and bonds, as hereinafter shown.

And these defendants, further answering, submit that cross-complainants have not by their said cross-bill entitled themselves to any equitable relief against these defendants, or any of
 171 them. And these defendants accordingly claim the same benefit from this their answer as if they had demurred to said cross-bill.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said cross-bill charged, without this, that there is any other matter, cause or thing in the said cross-complainants' said cross-bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants

are ready and willing to aver, maintain and prove, as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

CHARLES A. DUPEE.
NOBLE B. JUDAH.
MONROE L. WILLARD.
HENRY M. WOLF.

DUPEE, JUDAH, WILLARD & WOLF,
Sol'rs and of Counsel for D'r'd'ts.
DUPEE, JUDAH, WILLARD & WOLF.

STATE OF ILLINOIS, }
County of Cook, } ss :

On the 28th day of June, A. D. 1895, before me personally appeared Charles A. Dupee, Noble B. Judah, Monroe L. Willard and Henry M. Wolf, who, each of them, made solemn oath that he had seen the foregoing answer and knew the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

Subscribed and sworn to before me this 28th day of June, 1895.
EUGENE L. DUPEE,
Notary Public.

(Endorsed :) Filed June 29, 1895. S. W. Burnham, clerk.

172 Afterwards, to wit, on the sixth day of July, 1895, came Emanuel Stein by his solicitors and filed in the clerk's office of said court his separate answer to the cross-bill, which said answer is in the words and figures following, to wit :

Answer of Emanuel Stein to Cross-bill.

UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division, } ss :

In the Circuit Court of the United States.

NORTHERN TRUST COMPANY ET AL., Trustees, Com-
plainants,
vs.
COLUMBIA STRAW PAPER COMPANY, Defendant. } Bill.

HARRY W. DICKERMAN, Trustee, ET AL.
vs.
NORTHERN TRUST COMPANY ET AL. } Cross-bill.

The separate answer of Emanuel Stein to said cross-bill.

This defendant, saving and reserving to himself all benefit of exception to the manifold errors and insufficiencies of said cross-bill

for answer thereto, or to so much thereof as he is advised it is material he should make answer unto, says :

I. This defendant admits that the complainants in said cross-bill are the owners of shares of the common and preferred stock of said Columbia Straw Paper Company, as set forth in said paragraph 1, and defendant hereinafter sets forth fully the manner in which such shares were acquired by the said cross-complainants, and submits to the court whether the said complainants are the *bona fide* holders and owners of said shares for value, and did not, as stockholders or otherwise, participate in any of the matters in the said cross-bill complained of, and whether they are transferees with knowledge of stockholders who did participate in such acts, or whether they have acquiesced therein. It is the belief of this defendant, and he avers the fact to be, that the said cross-complainants and each of them were at the time of said acts fully cognizant thereof and participant therein.

173 II. Defendant admits the filing of the original bill of complaint, as set forth in paragraph 2 of said cross-bill.

III. This defendant denies the allegations of paragraph 3, of said cross-bill in manner and form as therein set forth, except as herein specifically admitted, and for answer thereto says :

In the summer of the year 1890, John B. Sherwood, who signs the said cross-bill on behalf of said cross-complainants, and who swears to the said cross-bill on their behalf, and James C. Richardson, one of the said cross-complainants, undertook to secure capital and form a corporation for the acquisition of such mills as were engaged in the manufacture of straw paper in the territory west of Pittsburg, bounded on the west by Lincoln, Nebraska, north by Minneapolis and south by the Ohio and Mississippi rivers. The said Sherwood and Richardson, in negotiation with the mill-owners in said territory, obtained options of purchase of the mill properties and expended a great deal of time and labor, but were not able to succeed in bringing about the formation of the new corporation.

In February, 1892, this defendant was informed by E. G. Church of such attempted organization and failure, and believing that it would be desirable to unite the mill properties in the territory aforesaid under one management, this defendant and said Church started an investigation as to the condition of the trade in the straw-paper industry and of mill properties.

At this time a movement was also under way, as this defendant is informed, amongst the mill-owners themselves to bring about the consolidation or combination of the straw-paper mills, in which movement the said Richardson and Fred. C. Trebein were interested, but the combination was not effected.

During said month of February defendant was introduced to the said John B. Sherwood, who was very enthusiastic about the profits to be derived from the organization of the mills engaged in the manufacture of straw paper in the aforesaid territory under one management, and offered to associate himself with this defendant and others in a plan for bringing about such organization. This defendant sought the assistance and advice of millmen and dealers

in straw paper, and Messrs. John B. Halladay and F. C. Trebein associated themselves with this defendant and said Church and said Sherwood. The said Sherwood prepared statements of the advantages to be derived from such combination, and of the profits which could be realized; also lists of the mills the title to which it would be desirable to acquire, and furnished such information to this defendant. The entire number of mills then called
174 straw-paper mills, within said territory, according to the information furnished by said Sherwood, numbered about fifty-seven, and there were at no time considered in connection with said enterprise by this defendant or any one associated with him, mills to the number of seventy, as alleged in said cross-bill. The said Sherwood stated that it might be desirable to acquire the title to forty-six of the fifty-seven mills out of the list submitted by him, and to lease eleven of the mills of minor importance, but upon investigation certain of the mills out of the forty-six mentioned were stricken from the list as not being properly straw-paper mills or not properties of sufficient importance to be acquired.

The parties so interested set about ascertaining the prices and term upon which mill properties could be acquired. It was decided that a corporation should be organized under the laws of the State of New Jersey, or some other State, with a share capital of \$4,000,000, consisting of \$1,000,000 of preferred stock and \$3,000,000 of common stock; also that \$1,000,000 of mortgage bonds should be issued on the property acquired, the said bonds and stock to pay for the properties purchased, including their good will, and also to provide sufficient working capital. The said John B. Sherwood was largely instrumental in outlining the form and plans of such organization.

Subsequently, Messrs. Philo D. Beard, Thomas T. Ramsdell and Samuel Untermyer became interested in the organization. A form of option contract was prepared and submitted to owners of mills, a copy of which contract is hereto attached, marked "Exhibit A," as a part of this answer. Said option contract, as will appear by reference thereto, contained fully a statement of the proposed organization. The said John B. Sherwood was active in negotiations with mill-owners and in submitting the plans of the proposed organization to them, and in many of such negotiations was assisted by the said cross-complainant Richardson.

As the result of such negotiations option contracts similar in form to Exhibit A hereto attached, varying as to prices to be paid for the properties, were executed by the owners of thirty-four of the mill properties now owned by the Columbia Straw Paper Company. Five of the mills now owned by said company were purchased directly and not upon the terms stated in said option contract.

The amount of the capital stock of said defendant company which would have been transferred to the owners of said five mills if they had executed the said option contracts, was subsequently set apart for and is held for account of said company,
175 amounting to \$222,000 of the common stock and \$111,000 of the preferred stock.

Each of the mill-owners who signed such option contracts, in

cluding said cross-complainants Buckstaff Bros. Manufacturing Company, Freeman and Julius Graham, James G. Richardson, Henry S. Carroll, F. J. Diem and the Merchants' National Bank of Defiance, Ohio, agreed to sell his mill property for a specific sum, payable one-third in cash, one-third in the preferred stock of the corporation to be organized, and one-third in the common stock of such corporation, and was to be given in addition an amount of common stock equal to one-third of the selling price of such mill.

The said Sherwood was to and did receive for his work in the organization of said company the sum of \$25,000 of the common stock of said company, and cash expended while engaged in procuring options.

After the options had been acquired and contracts made for the purchase of said mill property, and in accordance with the provisions of said option contracts, a corporation was organized under the laws of the State of New Jersey by the name of The Columbia Straw Paper Company, defendant in this cause, having a share capital of \$1,000,000 of preferred stock and \$3,000,000 of common stock, and authority under its charter to issue bonds.

The said option contracts were taken in the name of Thomas T. Ramsdell and Philo D. Beard. The said Ramsdell, prior to the organization of said company, withdrew from the plan, and assigned his interest to the said Samuel Stein, and thereafter the said Ramsdell ceased to have any interest in the said plan, and had no interest in the corporation thereafter organized. The said Philo D. Beard also assigned his interest in the said optional contracts to the said Stein. Upon the organization of the said company, the following persons were elected directors thereof: Philo D. Beard, William C. Heppenheimer, William C. Taylor, Maurice Untermeyer, Moses Weinman, J. C. Guggenheimer, T. L. Hermann, Harry C. Manheim, and Samuel H. Guggenheimer.

After the organization of the company was completed the said Emanuel Stein made a proposition in writing to the company in substance to sell and convey to said company the entire mill properties acquired by him, under the option contracts aforesaid, for the sum of \$5,000,000, to be paid by the said Columbia Straw Paper Company as follows: \$1,800 in cash, \$1,000,000 in the first-mortgage

176 bonds of the company, \$1,000,000 in the full-paid shares of the preferred stock of the company, and \$2,998,200 in full-paid shares of the common stock of the company, and the said Stein at the same time agreed, in addition to the said properties, to provide said company with the sum of \$200,000 in cash for a working capital and the general uses of the company, which fact is entirely omitted from the statement of said transaction in said cross bill. Thereupon the said proposition was accepted by said defendant company, and thereafter the said mill-owners, including cross complainants (except said Dickerman) conveying their properties and received payment therefor, in accordance with the terms of said options.

Defendant further states that during all the negotiations preceding the formation of said company, it was the belief of this defend-

ant and of those interested with him, and of the different mill-owners, including said cross-complainants, whose properties were transferred to said Columbia Straw Paper Company, that the value of the aggregate properties under one management and ownership would largely exceed the value of the different mills under separate ownerships. It was estimated by said Sherwood and others interested in the acquisition of said properties and the organization of said company that, by the concentration of said business, centralization of manufacture and the reduction of operating expenses to a minimum, in the large saving of cost that would be effected by uniting the industry under one head and by taking advantages of opportunities which the individual mill-owners were unable to secure, that the Columbia Straw Paper Company would pay the interest on the \$1,000,000 of bonds, eight per cent. on the \$1,000,000 of preferred stock, and at least fifteen per cent. on the \$3,000,000 of common stock proposed to be issued.

It was claimed at the time by the directors of a kindred industry that the cost of production could be decreased from \$3 to \$4 a ton under the management of a number of mill properties by one corporation. Many of the owners of mills who sold their properties to the corporation, instead of taking cash representing one-third of the selling price of their mills, invested said cash in the bonds of said Columbia Straw Paper Company, and also made additional purchases of the same, believing that said bonds were a safe and secure investment.

Defendant further states that within a few months after the organization of the Columbia Straw Paper Company, the entire business of the country was injured and the business of said company almost destroyed by what is known as the general panic of

1893. The demand for straw paper fell to such an extent 177 that but few of the mills could be operated, and the prices for paper were very low. In the meantime the idle mills were maintained at large expense and the paper produced was sold at a loss. The result was that the Columbia Straw Paper Company was unable to meet the interest maturing on its bonded debt on the 1st day of June, 1894, and on the 1st day of December, 1894, and thereupon certain of the holders of bonds of said company requested the trustees, complainants in the original bill in this cause, to proceed to foreclose the mortgage given by said company, and such bill was filed on the 24th day of January, 1895. Subsequent to the filing of such bill, and on or about the 9th day of February, 1895, this defendant received from said John B. Sherwood the following letter, and this defendant is informed and believes that a similar letter was sent by said Sherwood to the other directors of the said Columbia Straw Paper Company.

"INDIANAPOLIS, February 8, 1895.

DEAR SIR: I expect you, Mr. — —, and the others engaged in the formation and management of the Columbia Straw Paper Company, from whom I received \$25,000 in the common stock of said company for information given and services rendered, to jointly

make said stock good to me. I shall give you until February 21st, next, to consult and make arrangements for the payment. If, at the end of that time, I do not hear favorably on the proposition, I shall communicate with the different stockholders and creditors and submit a plan to them of enforcing a stock liability existing of over \$1,000,000, growing out of the manner of the formation of the company, by which means a substantial value will be given to all the stock of the company and the unsecured indebtedness liquidated in full.

I assure you that the method of organization of the company will be brought to light in a court of equity, and the liability fixed notwithstanding the matter in which the records of the company have been made to read, for I am familiar with the whole proceeding. A receiver will then act for the creditors and stockholders, as well as for the bondholders, and all the parties will be held to be holders of their stock by original subscription under the facts found.

Very truly yours,

JOHN B. SHERWOOD."

178 Defendant further states that neither this defendant nor any of the said directors to whom said letter was addressed paid any attention thereto. That they had been devoting their energies to the bringing about of some plan for the reorganization of said company which would provide for the payment of the unsecured creditors of the company, and also a sufficient working capital to enable the company to go on in business. That they had secured, after much negotiation and effort, the co-operation of a majority of the bondholders in a plan which, among other things, provides that such bondholder should surrender twenty-five per cent. of the bonds held by him, and should cancel and surrender past-due interest coupons and the coupon becoming due June 1, 1895. That while the directors were actively at work on this plan they learned from different sources that the said Sherwood was carrying out the threats contained in his letter of February 8th, and was endeavoring to prevent the co-operation of stockholders in carrying out the plan of reorganization, as will more fully appear by certain letters of said Sherwood, ready to be produced upon the hearing of this cause. And defendant states, by reason largely of the malicious and active hostility of the said Sherwood, because of the failure of said directors to pay him \$25,000, they were unable to obtain the requisite assent of bondholders and stockholders to said reorganization plan.

Defendant states that neither the said Sherwood nor the said cross-complainants, nor any one for them, has at any time since the filing of said original bill of complaint, approached this defendant or any of the directors or officers of said company to obtain information with reference to the various matters and things referred to in said cross-bill, many of which, as will appear by this answer and evidence ready to be produced, are false, and known by said Sherwood to be false.

This defendant states that each and all of the allegations of said

cross-bill reflecting upon the directors of said company emanated, as defendant believes, entirely from the said Sherwood and are made maliciously, because of the failure of said directors to pay the said Sherwood said sum of \$25,000. And defendant further states that during all the period of financial trouble of said defendant company six of the said directors of said company have been endorsers upon the commercial paper of said company, discounted at banks to obtain working capital, to the extent at one time of \$135,000, and at this time amounting to upwards of \$85,000; and that said six directors and others of said directors have pledged bonds of said defendant company owned by said directors to the amount of \$105,000 for additional indebtedness of said company, so that the said directors at the time of the filing of said bill of foreclosure and at this time are personally in danger of loss of upwards of the sum of \$185,000 for indebtedness directly due from said Columbia Straw Paper Company. And defendant states that for the endorsements so made and the bonds so pledged they have received no security from said company.

Defendant further states that subsequent to the organization of said Columbia Straw Paper Company, and before receiving from said company the said bonds in payment for the properties transferred to the company by him, he sold the bonds so received by him to various persons, and for each \$1,000 paid, assigned and delivered one \$1,000 bond of said company and twenty per cent. of the preferred stock of the company and forty per cent. of the common stock of the company, and that, amongst others who purchased said bonds and received said common and preferred stock were Henry S. Carroll and E. P. Hooker, the former of whom bought ten bonds and received twenty shares of the preferred and forty shares of common stock, and the latter of whom bought four bonds and received eight shares of preferred and sixteen shares of common stock. Defendant is not informed and cannot state whether the persons named in paragraph 3 were all purchasers of said bonds and stock or not, but leaves said cross-complainants to make such proof thereof as they may be able, but defendant states that it is not true that the giving and issuing of said stock and said bonds was kept secret from said cross-complainants and from other owners of mills, as in said cross-bill alleged.

Defendant further states that he is not now the holder of any of said bonds. That all of the bonds received by him upon the sale of said properties to said company were sold by him prior to July 1, 1893. And defendant also states upon information and belief that said defendants E. G. Church and A. P. Brown, do not own or hold any of said bonds, and had not owned any of said bonds for a long time prior to the filing of the original bill of complaint; that said defendant Beard is the owner of sixty of said bonds, but that all of said sixty bonds were pledged by said Beard to secure indebtedness due by said defendant Columbia Straw Paper Company long prior to the filing of said original bill.

Further answering, defendant says that the interest of said cross-

complainants, as he is informed and believes, was acquired in the manner following:

The said Henry W. Dickerman is the holder of 400 shares of preferred and 400 shares of the common stock by transfer from Freeman Graham, Jr., and Julius Graham, which transfer was

180 made on the books of said company on the —th day of

189-. That the said Grahams were owners of a certain p. mill at Rockford, Illinois, and one at Milan, Illinois, and executed one of the options above referred to. That the amount for which the said Grahams agreed to sell their said mills was \$160,000; that they received payment therefor \$53,300 cash, \$53,000 of the preferred stock of said company, \$53,700 of the common stock of said company, and an additional amount of \$53,000 of the common stock of said company, above the amount for which said mills were agreed to be sold. That the amount of stock so belonging to said Second National Bank of Rockford, Illinois, was part of the amount received by said Graham for their said mills, and, as defendant is informed and believes, the officers of said bank were fully informed of the negotiations leading to the sale of the mills of said Grahams, and of the manner in which they were paid for the same, and of the method in which said company was organized, of the amount of its capital and bonded debt, and the number of mills owned by the company prior to the transfer of said stock to said bank.

That the Buckstaff Brothers Manufacturing Company acquired the stock which they claim to own out of the sale of the Lincoln (Nebraska) mill; that they executed an option similar to said Exhibit A, for the sale of said mill. The agreed selling price of said mill was \$75,000, which was paid by \$25,000 cash, \$25,000 in preferred stock, and \$25,000 in the common stock of the company, and an additional \$25,000 in the common stock of the company.

The said Henry S. Carroll acquired the stock which he, by said cross-bill, claims to represent individually and as trustee, out of the sale of the Clarkville, Missouri, mill. That an option similar to said Exhibit A was executed for the sale of said mill, the agreed price being \$30,000 which was paid, \$10,000 in cash, \$10,000 in the preferred stock of said company, \$10,000 in the common stock of said company, and an additional \$10,000 of the common stock of said company. The said Carroll also bought ten bonds of the said defendant company, paying therefor the sum of \$10,000 in cash, and received with said bonds twenty shares of the preferred and forty shares of the common stock of said company.

The amount of stock owned by the said F. J. Diem was also received in the sale of one of said mills, to wit, the Mad River (Dayton, Ohio) mill, for which one of said options was executed, the agreed selling price being \$33,000, which was paid, \$11,000
181 in cash, \$11,000 in the preferred stock of said company, \$11,000 in the common stock of said company, and an additional \$11,000 of said common stock.

The preferred and common stock represented in said cross-bill to be owned by said Freeman Graham, Jr., and Julius Graham, was acquired by them from the sale of their property, as above set forth.

The said E. P. Hooker appears by the books of said company to hold, as trustee, 117 shares of the preferred stock and 224 shares of the common stock. This stock was issued in payment for the Defiance, Ohio, mill, for the sale of which an option similar to said Exhibit A was executed. The amount agreed to be paid for said mill was \$35,000, which amount was paid, \$11,667 in cash, \$11,666 in the preferred stock of said company, \$11,666 in the common stock of said company, and an additional amount of \$11,666 in said common stock. Defendant is informed and believes that the said Merchants' National Bank of Defiance, Ohio, and its officers were fully informed of the character of said option and of the method of the organization of said Columbia Straw Paper Company, and were entirely familiar with all of said facts prior to acquiring said preferred and common stock. The said E. P. Hooker personally purchased four of the bonds of said company, and paid therefor \$4,000 in cash, and received with the said bonds eight shares of the preferred stock of said company and sixteen shares of the common stock of said company.

The said James C. Richardson appears by the books of said company to own individually 100 shares of the common stock and fifty shares of the preferred stock, and to hold as trustee ten shares of said preferred stock. C. C. Richardson, trustee, appears to own 100 shares of the common stock and fifty shares of the preferred stock. Mary B. Richardson appears to own 100 shares of the common stock and forty shares of the preferred stock. The said stock was acquired by said Richardson from the sale of the Monroe, Michigan, mill, for which an option similar to said Exhibit A was executed, the agreed selling price being \$45,000, which was paid, \$15,000 in cash, \$15,000 in the preferred stock of said company, \$15,000 in the common stock of said company, and an additional \$15,000 of the common stock.

Further answering, this defendant states that prior to the transfer of said mills under said options a meeting of the mill-owners was held at Chicago, at which meeting, defendant is informed and believes, certain of said cross-complainants were present, and that at such meeting the entire plan to be adopted with reference to
182 the organization and conduct of the business of said corporation was fully discussed.

Further answering, defendant states that it is true that the said options for the purchase of said mills were assigned to this defendant, but defendant denies that the object of such assignment was for the purpose of evading the provisions of the statute of New Jersey, as alleged in said cross-bill. And defendant avers that said assignments were made to this defendant with the knowledge and acquiescence of said cross-complainants, and defendant admits that he accepted said options and that said law firm of Dupee, Judah, Willard & Wolf examined the title to said properties, and that said firm of Guggenheimer & Untermeyer prepared articles of incorporation, and that said Beard and others subscribed for shares of the stock of said company, and that said company was incorporated, all as in said cross-bill alleged.

Defendant denies that upon the filing of said articles of incorporation the said stockholders elected as directors the said Beard, Trebein, Church, Halliday, Frees, Higgins, Stein, Brown and Heppenheimer, but avers the fact to be that the persons then elected directors were Philo D. Beard, William C. Heppenheimer, William C. Taylor, Maurice Untermeyer, Moses Weinman, J. C. Guggenheimer, T. L. Herrmann, Harry C. Manheim and Samuel H. Guggenheimer, and defendant admits that the said Beard and said Guggenheimer were elected respectively president and secretary of said board, but defendant has no information as to whether said two law firms were at said time named and appointed the attorneys of said company.

Defendant further admits that on the 14th day of December, 1892, he made a written proposition to said board of directors to sell the said properties, etc., as in said cross-bill alleged, for \$5,000,000, to be paid as follows: \$1,800 in cash, \$1,000,000 in the first-mortgage bonds of the company, \$1,000,000 in the full-paid shares of the preferred stock of said company, and \$2,998,200 in the full-paid shares of the common stock of said company, and defendant avers that as a part of the same transaction, and at the same time, the defendant, also in writing, agreed as part consideration for the issuance to him of the bonds and stock, to pay and furnish to said company the sum of \$200,000 in cash as a working capital for said company.

Defendant denies that at the time of the offer by him as aforesaid he was a director of said company.

183 Further answering, defendant denies that at the time he made said offer each and every one of said directors and the other persons in said cross-bill referred to knew that the par value of the shares of stock asked by said Stein exceeded in amount the value of the property in exchange for which said Stein asked that it should be issued, and denies that the said directors, in disregard of their duty, and with an attempt to defraud the said cross-complainants and other mill-owners or any other persons whatsoever, deliberately and fraudulently overvalued said property in the sum of \$2,113,000, but defendant admits that the said company agreed to purchase the said properties upon the terms mentioned in the said proposition of this defendant, together with his agreement to provide said \$200,000 in cash. And defendant avers that it was his belief, and the belief of all the above-named persons connected with the organization of said defendant company, that the value of the properties, including the working capital paid in, was fully equal to the \$5,000,000 of bonds and preferred and common stock issued therefor.

Defendant has hereinbefore fully set forth the manner in which said options were to be acquired, and said company was to be organized and the names of the persons connected therewith, and who were familiar with the same, but avers that the said cross-complainants, and each of them and many other persons, had the same knowledge, and he denies that the terms of said purchase was to be kept secret from the owners of each and every of the said mill plants,

but, on the contrary, avers, that the terms of said purchase were well known to said mill-owners.

This defendant, further answering, denies that any of the bonds or stock of said Columbia Straw Paper Company were illegally and fraudulently withdrawn from the treasury of said defendant by any of the persons in said cross-bill alleged, as alleged in paragraph 3 thereof, or by any other persons.

Defendant admits that the said Philo D. Beard caused a certificate to be filed with the secretary of state of New Jersey, in which he stated that the capital stock of said company had been paid, as alleged in said cross-bill, and defendant avers that the said certificate is true in fact, and that said stock was fully paid in money and property, as required by the laws of said State of New Jersey.

Defendant further answering, states that the board of directors of said company, which was elected after certain of the first board of directors hereinbefore mentioned had resigned, was composed of several mill-owners, who were entirely acceptable to and
184 agreed to by the cross-complainants, and other mill-owners, and that the said Frees, Higgins and Brown, of said board of directors were three owners of mills who had sold their property under options similar to Exhibit A, and that said three last-named persons had no other or greater information about the organization of said company and the matters and things herein set forth than the said cross-complainants. And defendant denies that such board of directors has at any time acted in any manner destructive to the corporation itself or for or on behalf of their own interests, but, on the contrary thereof, this defendant avers that by reason of the conditions of general business, and of the straw-paper business, a large and unusual amount of work has been required on the part of said directors and that they and each of them have devoted their time and energy to furthering the business interests of said company, and of all stockholders, bondholders and creditors thereof, and, as hereinbefore set forth, that by the personal endorsements and the deposit of bonds of said company owned by themselves, without security from said company, they have provided a working capital for the company and for the payment of a large amount of its debts, to merchandise, labor and other creditors.

IV. Defendant further answering, denies that the execution of said mortgage was fraudulent and in violation of the rights of said cross-complainants and others, and that the bonds issued thereunder were without consideration to the defendant company, and were of no benefit thereto.

V. Defendant further answering denies that the provision of said mortgage with reference to the redemption and the discharge of the bonds thereby secured, was usurious and void, as in said paragraph 5 alleged, but on the contrary, avers that provision for such redemption is an ordinary provision in corporate mortgages and warranted by law.

VI. Defendant further answering, on information and belief, admits that a judgment was recovered by one James Flanagan against said company as in said paragraph 6 of said cross-bill alleged, but

denies that the said company made default in the payment of six coupons held by said Flanagan for the purpose of authorizing suit to be instituted thereon, and denies that the said transaction was the fraudulent and collusive act of the managers and attorneys of said Columbia Company, as in paragraph 6 of said cross-bill alleged.

VII. Defendant, further answering, denies that the board of directors of said company loaned this defendant the sum of
185 \$114,940.31, or any other sum to enable him to pay notes due by him to certain mills, as in said paragraph 7 alleged, and defendant denies that he is or was at the time of the filing of said bill of complaint, the holder or owner of any of the bonds of said company.

VIII. Defendant denies that the persons named in said paragraph 8 have withdrawn from the treasury of said defendant large numbers of bonds and stock, to the value of \$3,000,000, or any bonds and stock of said company, as in paragraph 8 alleged.

IX. Further answering, defendant admits that in the month of June, 1894, the Paper Commission Company was organized through which the product of the mills of the said defendant company and other mills was to be sold, and that said Beard became president, said Stein treasurer, and said Halliday selling agent of said company; but defendant denies that the cost to the Columbia Straw Paper Company of selling paper through said Paper Commission Company, for six months preceding the formation of the latter company, was the sum stated in said cross-bill, or that the said cost was increased, as therein stated; and denies that the said \$40,000 was divided amongst the officers and attorneys of the said defendant Columbia Straw Paper Company.

This defendant further answering, states that in said Exhibit C, referred to in said paragraph, an error was committed in stating that twenty-five per cent. commission was paid to the Paper Commission Company on all paper sold by it from June 10, to December 31, 1894. He states that fact to be that the said twenty-five per cent. was paid from June 10, 1894, up to November, 1895, for about one-half of the paper sold; that thereafter the price per ton paid said Paper Commission Company on sales of such paper was \$1 per ton on all paper sold, which price included the guaranty by the Paper Commission Company of all accounts for the sale of paper.

Defendant denies that it cost upwards of \$40,000 for making its sales, as in said paragraph stated, and denies that \$40,000 or any other sum was divided amongst said officers and attorneys of the Columbia Straw Paper Company, and that *that* they hold said forty thousand dollars (\$40,000), or any other sum, in trust for the use and benefit of the said Columbia Straw Paper Company.

This defendant states the fact to be that the said Beard received as salary from said Paper Commission Company, as president thereof,
186 1894; that during that period when he received that salary as such president of the Paper Commission Company he re-

ceived no salary or compensation from the Columbia Straw Paper Company.

Defendant further states that he received a salary as treasurer, from said Paper Commission Company, at the rate of three thousand dollars (\$3,000) per annum, from its organization.

Defendant further states that said Halliday received as salary as sale agent of said commission company, the sum of seventy-five hundred dollars (\$7,500) per annum, from the organization of said company up to the 1st day of October, 1894, and thereafter received no salary from said company.

And defendant further states that no other officers of the Columbia Straw Paper Company received any compensation from said Paper Commission Company.

X. Further answering, defendant admits that a plan of reorganization of said defendant company was formulated, as hereinbefore and in said paragraph 10 alleged. Defendant denies that the rights and interest of said defendant company have been at any time placed within the control of the said trustees and the said bondholders, but on the contrary, avers the fact to be that the said directors have remained in the actual and entire control of the affairs of said company, except so far as the actual operation of the property has been removed from their power by the filing of said foreclosure bill and the taking possession of said properties by said trustees. Defendant avers that the object of requiring said resignations was to provide for a change in the management of said company in case the said reorganization plan should be effected, and that this defendant and the other directors of said company were entirely willing, in the interests of a plan which they considered to be for the benefit of the creditors and the stock and bond holders of the company, to resign and allow a new board of directors and new managers to be elected in case the said plan was successful. That the said plan did not become of effect, and the said resignations have never been acted upon or accepted, and upon the failure of said plan, on the 1st day of May, 1895, became ineffectual, and were subsequently withdrawn.

XI. Defendant further answering, denies that all the officers and directors of said defendant company are large holders of the bonds sought to be foreclosed by the original bill of complaint, and that they have arranged their affairs so that it will be to their greater advantage to admit, without defense, said mortgage, and the foreclosure of the same; and defendant denies that, by reason of
187 the matters in said paragraph 11 alleged, the said board of directors and officers caused to be filed in this proceeding an answer, as in said paragraph 11 alleged. This defendant states the fact to be that the directors of said company were and are advised by counsel that the matters and things in said original bill alleged, are true so far as admitted to be true, in said answer; and defendant states that so far as he and the other directors are concerned, they are and at all times have been willing to take any action proper for the protection of the interests of said company, and he denies that they have at any time been guilty of mismanagement of the affairs of said company.

XII. Defendant has no knowledge as to many of the matters and things in paragraph 12 of said cross-bill alleged, and therefore neither admits nor denies the same, except as herein specifically stated. Defendant denies that the said law firm of Dupee, Judah, Willard & Wolf are the solicitors of this defendant, or of the said Beard. Defendant denies that this defendant or the said board have caused proceedings to be instituted in New Jersey, as in said paragraph 12 alleged, but on the contrary, states that this defendant and the said Beard had no knowledge of and did not consent to the institution of said suit in New Jersey, nor to the appointment of a receiver therein, and did not admit before the said chancellor at the hearing of said petition, or at any other time in said suit, or for the purpose of said suit, the insolvency of said company. Defendant admits, on information, that one William G. E. See has been appointed receiver of said company, but he has no knowledge as to the powers conferred upon him.

XIII. Further answering, defendant denies that the receiver appointed under said original bill, has been acting under the direction in any degree or manner of the firm of Herrick, Allen & Boyesen, solicitors for said defendant company.

Defendant is informed that the said receiver has taken possession of the mills and properties covered by said mortgage, but has at no time been subject to or requested the instructions of the board of directors of said company or their solicitors, but has proceeded entirely independently of and without consultation with the officers, directors or attorneys of the said defendant company.

Further answering, defendant states that the matters and things set up in said cross-bill have been for more than two years last past fully known and acquiesced in by said cross-complainants, and that they ought not now to be heard in complaint thereof.

188 Further answering, defendant denies that the said cross-complainants are entitled to any of the relief in said cross-bill sought, and denies that they are entitled to recover anything from this defendant.

This defendant says that the said cross-complainants are not creditors of said company, but are stockholders therein, and that in law they are not entitled to demand or receive the relief prayed in — by said cross-bill. And defendant further states that said corporation is organized under the laws of New Jersey, and that under the law of said State it is required that a judgment should be obtained against any corporation therein organized and execution thereon returned unsatisfied before proceedings can be had against any director or stockholder of any such company. Defendant avers that no judgment has been obtained against said corporation by said cross-complainants, or any of them.

For the reasons aforesaid and for other reasons appearing on the face of said cross-bill, this defendant doth demur to the said cross-bill, and for cause of demurrer sheweth that the said cross-complainants have not made or stated such a case as entitles them in a court of equity to the relief prayed for, or any part thereof, and prays the same benefit of said demurrer as though demurrer had

been filed, specifically assigning said causes, prior to the filing of this answer.

And this defendant denies all manner of unlawful combination and confederacy wherewith he is by said bill charged without this that there is any other matter, cause or thing in the said cross-bill contained material or necessary for this defendant to make answer unto, not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver and prove as this honorable court shall direct, and he prays to be hence dismissed with his costs in this behalf most wrongfully sustained.

EMANUEL STEIN.

HERRICK, ALLEN & BOYESEN,
Solicitors and of Counsel.

189 STATE OF ILLINOIS, }
Cook County, } ss:

Emanuel Stein, being first duly sworn, deposes and says that the matters and things set forth in the foregoing answer by him subscribed are true, except those matters stated on information and belief, and those he believes to be true.

EMANUEL STEIN.

Subscribed and sworn to before me this sixth day of July, 1895.

[SEAL.]

ARTHUR W. HALE,
Notary Public.

(Endorsed :) Filed July 6, 1895. S. W. Burnham, clerk.

Afterwards, to wit: on the ninth day of July, 1895, came the Northern Trust Company and Ovid B. Jameson, trustees, by their solicitors and filed in the clerk's office of said court their answer to the cross-bill of Harry M. Dickerman *et al.*, which said answer is in the words and figures following, to wit:

Answer of Northern Trust Co. to Cross-bill.

In the Circuit Court of the United States, Northern District of
Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and OVID	} In Equity. Gen. No., 32614; Term No., 832.
B. Jameson, Trustees, Complainants,	
<i>vs.</i>	
COLUMBIA STRAW PAPER COMPANY, De-	} Cross-bill.
fendant.	
DICKERMAN ET AL.	}
<i>vs.</i>	
COLUMBIA STRAW PAPER COMPANY ET AL.	

The answers of the Northern Trust Company and Ovid B. Jameson, trustees, to the cross-bill of Harry W. Dickerman *et al.*

These cross-defendants now, and at all times hereafter, saving to themselves all and in all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said cross-bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer unto, answering say:

190 That they admit that they exhibited on or about the twenty-fourth day of January, 1895, a bill of complaint against said Columbia Straw Paper Company, as in said cross-bill alleged, and that answers have been filed thereto as in said cross-bill alleged.

These defendants further answering deny that the firm of Guggenheimer & Untermeyer are the solicitors of these defendants in this foreclosure proceeding either of record, or otherwise.

These defendants further answering say that they have no knowledge as to the other matters and things in said cross-bill alleged, and they leave said cross-complainants to make such proof in regard thereto as they are advised it is necessary or material.

These defendants further answering deny that the said cross-complainants are entitled to the relief, or any part thereof, in the said bill of complaint demanded without this that there is any other matter, cause or thing *contained* in the said cross-complainants' bill of complaint contained material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge and belief of these defendants, all which matters and things these defendants are ready and willing to aver, maintain and prove as this honorable court shall direct.

[Seal of the Northern Trust Company.]

THE NORTHERN TRUST COMPANY,
By ARTHUR HUNTLEY, *Secretary*.
OVID B. JAMESON.
DUPEE, JUDAH, WILLARD & WOLF,
Solicitors for Trustees.

(Endorsed :) Filed July 9, 1895. S. W. Burnham, clerk.

191 Afterwards, to wit, on the twenty-third day of July, 1895, came the Columbia Straw Paper Company, by its solicitors, and filed in the clerk's office of said court its answer to the cross-bill of Harry W. Dickerman, trustee, *et al.*; which said answer is in the words and figures following, to wit:

Separate Answer of Columbia Straw Paper Co. to Cross-bill.

UNITED STATES OF AMERICA, }
Northern District of Illinois. }

In the Circuit Court of the United States.

THE NORTHERN TRUST COMPANY and OVID B. JAMESON, }
Trustees, Complainants, } Bill.
v.
THE COLUMBIA STRAW PAPER COMPANY, Defendant. }

HENRY W. DICKERMAN, Trustee, ET AL. }
v. } Cross-bill.
THE NORTHERN TRUST COMPANY ET AL. }

The separate answer of the Columbia Straw Paper Company to said cross-bill.

The Columbia Straw Paper Company, saving and reserving to itself all benefit of exception to the manifold errors in said cross-bill contained, for answer thereto, or to so much thereof as it is advised it is necessary to answer, says:

1. This defendant admits that the said cross-complainants appear by the books of the company to be holders of the shares of the preferred and common stock of said company, substantially as stated in said cross-bill, but this defendant has no knowledge whether the said cross-complainants participated in the acts in said cross-bill set forth, or whether they are transferees with knowledge of stockholders who did participate, or whether they have acquiesced therein since obtaining knowledge thereof, but leaves cross-complainants to make such proof in connection therewith as they may be able.

2. Defendant admits the filing of the bill of complaint by the Northern Trust Company and Ovid B. Jameson as set forth in paragraph 2 of said cross-bill.

192 3. Defendant further answering, says that it has no knowledge as to many of the matters and things set up in paragraph 3 of said cross-bill, and asks that the said cross-complainants may be required to make strict proof of all such matters and things, so far as material, except as the same are hereinafter specifically admitted.

This defendant admits that certain options for executory contracts were obtained in 1892 by Philo D. Beard and Thomas T. Ramsdell for the purchase of thirty-nine mills then engaged in the manufacture of straw paper.

Defendant further states, that under the terms of the purchase of said mill properties, each mill-owner was to receive one-third of the price agreed to be paid for said mill, in cash, one-third of said price in the preferred stock of the corporation to be thereafter organized, as set forth in said option, and one-third of such purchase price in the common stock of said company, and was also to receive an amount of the common stock of said company above the price at which such mill was sold, equal to one-third of the purchase price of said mill.

Defendant further admits, that articles of incorporation of this defendant company were executed by said Beard, Heppenheimer and Taylor, and that each of said persons subscribed for four shares of the capital stock of said company, and that said company was organized under the laws of the State of New Jersey, as alleged in said paragraph 3 of said cross-bill, and that articles of incorporation were filed in the office of the secretary of said State on the 6th day of December, 1892.

This defendant denies that immediately upon the filing of the articles of incorporation of said corporation, said stockholders elected as directors said Beard, Trebein, Church, Halliday, Frees, Higgins, Stein, Brown and Heppenheimer, and avers the fact to be that upon the organization of said company, and on the 14th day of December, 1892, the persons elected directors were Philo D. Beard, William C. Heppenheimer, William C. Taylor, Maurice Untermyer, Moses Weinman, J. C. Guggenheimer, T. L. Hermann, Harry C. Manheim, and Samuel H. Guggenheimer.

Defendant further admits that on the 14th day of December, 1892, one Emanuel Stein, who was not then one of the directors of said company, made a written proposition to the said company to sell and transfer to said company the properties in said cross-bill mentioned, as therein stated, and that said proposition was accepted by said company; and defendant states that the said Stein at 193 the same time, and as a part of the same transaction, agreed to pay over to said company the sum of two hundred thousand dollars (\$200,000) in cash, as working capital.

Defendant further answering denies that at the time of the offer of said Stein, each and every one of said directors knew that the par value of the shares of stock asked for by said Stein as purchase-money exceeded in amount the value of the property in exchange for which said Stein asked that it should be issued, and denies that the said board of directors disregarded their duty as directors or acted with any intent to defraud said cross-complainants or other persons, mill-owners, or who were about to become stockholders under said options and without the knowledge of said orators or said mill-owners, deliberately and fraudulently overvalued said property in the sum of \$2,113,000, but on the contrary, the said defendant avers that the said company entered into said contract with said Stein in good faith, believing the property to be transferred by said Stein to said company, including the \$200,000 of cash to be furnished, was fully worth the said sum of \$5,000,000 of bonds and securities to be issued therefor.

Defendant further answering says, on information and belief, that the form in which said company was to be organized, and the terms upon which it was proposed that the said company should acquire said properties were fully known to the said cross-complainants and each of them, and that the proposal to organize said company was fully set forth in the option contracts, executed by certain of said cross-complainants and by the mill-owners whose properties were subsequently acquired by this defendant.

This defendant further answering denies that each and every of said directors knew that the terms of such purchase were to be kept secret from each and every of the owners of said mill plants, and on the contrary states, on information and belief, that the said cross-complainants and each of them and said mill-owners were fully informed and co-operated in the bringing together of the mill properties under one corporate management, upon the terms on which the defendant company acquired said properties, in accordance with the provisions of said option contracts.

Defendant denies each and all of the allegations of said paragraph 3 of said cross-bill, that any of the stock of said company was illegally and fraudulently withdrawn from the treasury of this defendant company without payment therefor, either in money or property, as provided by the statutes of the State of New Jersey.

194 Defendant admits that on the 17th day of May, 1893, the said Philo D. Beard, as president, caused to be filed with the secretary of the State of New Jersey, a certificate, as in said paragraph alleged, but defendant denies that said stock has never been fully paid in money or property, as required by the statute of the State of New Jersey.

Defendant further answering states that, subsequent to the election of the first board of directors of said company, as hereinbefore stated, a new board of directors was elected, to wit, the said Beard, Trebein, Church, Halladay, Frees, Higgins, Stein, Brown and Heppenheimer, and that the said-named persons are still acting as such board of directors. This defendant denies that the said directors are acting in a manner destructive of the interests of the corporation itself, and for and on behalf of their own interests.

4. This defendant, further answering, denies that the said mortgage mentioned in said paragraph 4 was and is fraudulent and in violation of the rights of said cross-complainants and others as stockholders of said company, and that said mortgage and bonds issued thereunder were without consideration to this defendant and were of no benefit thereto.

5. Further answering, this defendant denies that the provision in said mortgage for the redemption of the bonds secured thereby at a certain premium, to wit, the redemption of each one-thousand-dollar bond at the sum of eleven hundred dollars, as in said mortgage provided, was corrupt, usurious, unlawful and void; on the contrary, this defendant states that it was the expectation of said company that out of the profits of its business it would be able to retire and cancel its bonded debt; that in order to make the said bonds

negotiable securities, it was necessary to provide for their payment at a fixed time, and that the holders thereof could not justly be required to surrender said securities prior to the maturity thereof without the payment of the premium, and that such provision is customary in the issuing of like securities and was a proper contract to make as between said company and the holders of its bonds.

6. Defendant, further answering, admits that the provisions are contained in said mortgage, as set out in said paragraph 6, with reference to a judgment and execution against said company.

Defendant, further answering, admits that the company did not pay six certain interest coupons on the bond of one James Flanagan, but denies that said failure to pay was pursuant to the advice of said two law firms in said paragraph mentioned. On the contrary, defendant states that said company made default in the payment of all the coupons maturing upon its bonds at the same time with the said interest coupons of said Flanagan, and that said company was unable and without money to pay any of said interest and did not make the default on said Flanagan coupons in order that suit might be instituted thereon.

Defendant further admits that the said Flanagan instituted said suit, and that the said Beard entered the appearance of said defendant corporation and consented to an immediate trial, and that the trial was had, and that the court upon such trial entered judgment in favor of said Flanagan.

Defendant denies that the aforesaid transaction was the fraudulent and collusive act of the managers and attorneys of said defendant company with themselves as bondholders, in order to give their representatives, the trustees herein, the right to bargain this foreclosure proceeding.

7. Defendant further answering denies that this defendant, or the said Philo D. Beard, as president, and the other persons mentioned in paragraph 7 of said cross-bill, loaned out of the treasury of said company to said Emanuel Stein the sum of \$114,940.31, or any other sum of money, to enable said Stein to pay notes due by him to the owners of certain mills, or for any other purpose.

8. Defendant further answering denies that the said Beard and the others mentioned in said paragraph 8 have in any manner combined and confederated to wreck this defendant company and to defraud the said orators as stockholders, and that they have withdrawn from the treasury of said company without reimbursing the same, large numbers of bonds and stocks of the value of \$3,000,000, or any other amount.

9. Defendant admits that in the month of June, 1894, the Paper Commission Company was organized under the laws of New Jersey, with the concurrence of this defendant, the said law firms mentioned in said paragraph 9, attending to the legal work of such organization, that it was the object of such incorporation to sell the paper manufactured by this defendant company, and by other mills manufacturing the same kind of paper upon a commission. Defendant states that the capital stock of said Paper Commission

Company paid up was \$16,500, and that this defendant subscribed and paid for \$12,000 of said stock.

196 Defendant denies that the cost to said company of selling the paper prior and subsequent to the formation of said commission company is as stated in said cross-bill.

Further answering, defendant says that it was believed by the directors of this defendant company that the said Paper Commission Company would be an efficient agent for handling the product of the mills of this company, in connection with the product of the mills of other companies and at less expense than if handled directly by this defendant company.

This defendant, further answering, states that in said Exhibit C, referred to in said paragraph, an error was committed in stating that twenty-five per cent. commission was paid to the Paper Commission Company on all paper sold by it from June 10th, to December 31st, 1894. It states the fact to be that the said twenty-five per cent. was paid from June 10th, 1894, up to November, 1894, on one-half of the paper sold; that thereafter the price per ton paid said Paper Commission Company on sales of such paper was one dollar per ton, on all paper sold, which price included the guaranty by the Paper Commission Company of all accounts for the sales of paper. Defendant denies that it cost upwards of \$40,000 for making its sales, as in said paragraph stated, and denies that \$40,000 or any other sum was divided amongst said officers and attorneys of this defendant, and that they hold said \$40,000 or any other sum in trust for the use and benefit of said defendant company.

10. This defendant further answering, admits that a certain written agreement for the reorganization of said company was formulated, as stated in said paragraph 10, and defendant attaches hereto a copy of said proposition marked Exhibit A, as part of its answer. And this defendant at the time of the formulating of said plan believed and now believes that the said plan was for the best interests of all creditors, bondholders and stockholders of defendant company. And defendant further answering states that the said proposition was brought about in the manner following:

In the latter part of December, 1894, the directors of the defendant company were advised that certain holders of the bonds of the company, no one of said directors concurring therein, had requested the trustees, complainants in the original bill in this cause, to foreclose the mortgage or trust deed, securing the one million dollars of bonds issued by this company, by reason of default in payment of interest, and certain other defaults made by said company, in

the performance of the covenants of said trust deed. Defendant states that at said time, and for a long time prior thereto, the defendant had been in financial straits; the company was very largely indebted, and was without means or convertible assets available for the payment of its debts, and the directors were asked by the trustees to surrender possession of the mortgage property under the terms of said trust deed. In this condition of affairs, the directors entered into negotiations with the holders of the bonds, who had requested the foreclosure of said trust

deed, with a view of bringing about a plan of reorganization of the company, which would protect its creditors and others interested, and furnish sufficient working capital for continuing the business. The directors of the company succeeded in obtaining delay both in the institution and prosecution of the foreclosure proceedings, and after prolonged negotiations, said bondholders agreed to the plan of reorganization outlined in said Exhibit A, hereto attached, and made it a condition of their assent to such agreement that the resignation of a majority of the directors of this company should be placed in the hands of a trustee, so that, if reorganization were effected, the management of the company could be changed. The directors of the company, believing it to be for the interests of the creditors, stockholders and bondholders, that such plan of reorganization should be adopted, consented to place their resignations in the hands of a trustee so that a reorganized company could make use of such resignations, if desired. Subsequent to formulating said agreement, and after the 1st day of May, which was the time limited in said plan for its completion, the said resignations, none of them having been accepted, were withdrawn, and the directory of said company now remains as before the said plan was formulated. And the said cross-complainants well know that said directors in proposing said plan of reorganization of the said defendant company, acted in good faith, and with the intention of conserving the property of the company, for the benefit of the creditors and stockholders, and all others interested therein, and they also well know that the board of directors of this as of any company is determined and elected by its stockholders and that the stockholders of this company can at any time proceed to elect a new board of directors.

11. Defendant further answering denies that all of the officers and directors of this company are large holders of the bonds sought to be foreclosed by said original bill of complaint but states the fact to be that several of said directors do not and for a long time prior to the institution of said foreclosure proceedings did not own or hold any of said bonds, and that many of the directors had pledged, in some cases all and in some cases a large part of the bonds

owned by them, to secure debts of the company incurred in the operation and maintenance of its properties. And defendant denies upon information and belief that said directors have so arranged their affairs that it would be to their greater advantage to admit without defense the foreclosure of said mortgage.

198 Defendant admits that an answer has been filed to said original bill of complaint, in which all the averments of the original bill of complaint are admitted to be true, save and except the fact as to whether a sufficient number of bondholders have instructed and authorized said trustees to institute said suit, and defendant states that it is advised by counsel that such answer is true in fact and in law, and that the various averments of said foreclosure bill could not be denied, and cannot be denied by this defendant company. And defendant further states that the said trustees, complainants, immediately after the filing of the original bill herein, filed ancillary foreclosure bills, so called, in circuit courts of the United States

in all districts and States wherein mill properties of said defendant company covered by said trust deed were located, and that to the bill filed in each of said cases, some twelve in all, this defendant answered and in its answer did demur to said bills and each of them.

This defendant, further answering, denies that there has been any fraudulent mismanagement of said defendant company, or any intention on the part of said company to fail to avail itself of all proper defenses to said foreclosure bill, and says that neither said cross-complainants nor any one on their behalf has at any time requested this defendant for any information concerning the matters and things referred to in said cross-bill, or to take any action concerning the same.

12. Defendant, further answering, says that it has no knowledge as to the preparation of said bill for the foreclosure of said mortgage, and denies on information and belief that said Dupee, Judah, Willard & Wolf are the solicitors for said Beard and Stein, president and treasurer of this company.

Defendant denies on information and belief that the said Beard and Stein have caused proceedings to be instituted in the State of New Jersey to have this defendant company declared insolvent, and for the appointment of a receiver, or have had anything to do with such proceeding, and deny that they knew anything concerning the same prior to the filing of the bill in New Jersey, and denies that said Beard and Stein admitted before said chancellor the insolvency of said company.

199 This defendant admits upon information and belief that one William G. E. See has been appointed receiver in said State of New Jersey, but states that the proceedings for said appointment were without the knowledge and concurrence or acquiescence of this defendant company or any of its officers.

13. Defendant, further answering, admits that the said receiver, appointed under the original bill filed herein, was appointed receiver of the mortgaged premises only, and defendant denies that since his appointment the said receiver has been in any respect acting under the direction and with the advice or in conference with the defendant company, or with its solicitors.

Defendant further states that the said receiver has taken actual possession of the property of said corporation, but has not entered into the operation of the same because this defendant, by its solicitors, opposed including any authority to said receiver to operate said property, in the original order of his appointment, and has since opposed the operation of said property by the receiver, believing that it is not for the interests of the creditors or stockholders, or any one interested in the company, that at the present time and in the present condition of affairs of this company and of the straw-paper trade, that such mills belonging to this defendant company should be operated or can be operated by a receiver with profit.

And this defendant denies all manner of unlawful combination and confederacy wherewith it is by said bill charged; without this, that there is any other matter, cause or thing in the said cross-bill

contained material or necessary for this defendant to make answer unto, not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver and prove as this honorable court shall direct, and it prays to be hence dismissed with its costs in this behalf most wrongfully sustained.

THE COLUMBIA STRAW PAPER
COMPANY,
By HERRICK, ALLEN & BOYESEN,
Its Solicitors.

(Endorsed :) Filed July 23, 1895. S. W. Burnham, clerk.

200 Afterwards, to wit: on the thirty-first day of July, in the July term of said court, 1895, in the record of proceedings thereof in said entitled cause before the Hon. William H. Seaman, district judge, appears the following entry, to wit:

Order Extending Time to Answer Cross-bill.

Entry.

THE NORTHERN TRUST COMPANY, Trustee, ET AL.	} In Chancery.
vs.	
COLUMBIA STRAW PAPER COMPANY ET AL.	23614.

On motion of solicitors for certain cross-defendants, it is hereby ordered that the time for Solomon Marx, James Flanagan, Randolph Guggenheimer, Samuel Untermeyer, Maurice Untermeyer and Moses Weinman, cross-defendants, to plead, answer or demur to the cross-bill of Dickerman, trustee, *et al.*, be extended to August 16, 1895, and the time for cross-complainants to reply be extended to thirty days after the filing of answer or demurrer by defendants.

201 Afterwards, to wit, on the first day of August, 1895, came Harry W. Dickerman, trustee, cross-complainant, by his solicitors, and filed in the clerk's office of said court his replications to the answers of Columbia Straw Paper Company, the Northern Trust Company, Emanuel Stein, and to the joint and several answer of Charles A. Dupee, Noble B. Judah, Monroe L. Willard and Henry M. Wolf, which said replications are respectively in the words and figures following, to wit:

Replication to Answer of Columbia Straw Paper Co.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ss :

In the Circuit Court of the United States for the Northern District
 of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and OVID B. JAMESON, Trustees, Complainants,	} Bill. In Equity. 23614-832.
vs. THE COLUMBIA STRAW PAPER COMPANY, De- fendant.	

HARRY W. DICKERMAN ET AL., Complainants,	} Cross-bill.
vs. PHILO D. BEARD ET AL., Defendants.	

The replication of the cross-complainants, Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois; Buckstaff Brothers Manufacturing Company, Henry S. Carroll, for himself and the Clarksville Paper Company; F. J. Diem, Freeman Graham, Jr., Julius Graham, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, to the separate answer of the defendant The Columbia Straw Paper Company, to the cross-bill filed herein.

These repliants saving and reserving to themselves all, and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto say, that they will aver and prove their said cross-bill to be true, certain, and sufficient 202 in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, transversed or denied, is true; all which matters and things these repliants are, and will be, ready to aver and prove, as this honorable court shall direct; and humbly pray, as in and by their said cross —.

BLUFORD WILSON AND
 OTTO GRESHAM,
Solicitors for Cross-complainants.

(Endorsed :) Filed Aug. 1, 1895. S. W. Burnham, clerk.

Replication to Answer of Northern Trust Co.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ss :

In the Circuit Court of the United States for the Northern District
 of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and OVID B. Jameson, Trustees, Complainants,	} Bill. In Equity. 23614-832.
vs. THE COLUMBIA STRAW PAPER COMPANY, De- fendant.	

HARRY W. DICKERMAN ET AL., Complainants,	} Cross-bill.
vs. PHILO D. BEARD ET AL., Defendants.	

The replication of the cross-complainants, Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois; Buckstaff Brothers Manufacturing Company, Henry S. Carroll, for himself and the Clarksville Paper Company; F. J. Diem, Freeman Graham, Jr., Julius Graham, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, to the answers of the defendant, The Northern Trust Company and Ovid B. Jameson, to the cross-bill filed herein.

203 These repliants, saving and reserving to themselves all, and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto say, that they will aver and prove their said cross-bill to be true, certain, and sufficient in the law to be answered unto; and that the said answers of the said defendants are uncertain, untrue and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answers contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are, and will be, ready to aver and prove, as this honorable court shall direct; and humbly pray, as in and by their said cross-bill they have already prayed.

BLUFORD WILSON AND
 OTTO GRESHAM,
Solicitors for Cross-complainants.

(Endorsed :) Filed August 1, 1895. S. W. Burnham, clerk.

Replication to Separate Answer of Emanuel Stein.

UNITED STATES OF AMERICA, }
 Northern District of Illinois, Northern Division, } ⁸⁸ :

In the Circuit Court of the United States for the Northern District
 of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and OVID B. }
 Jameson, Trustees, Complainants, }
 vs. } Bill. In Equity.
 THE COLUMBIA STRAW PAPER COMPANY, De- } 23614-832.
 fendant. }

HARRY W. DICKERMAN ET AL., Complainants, }
 vs. } Cross-bill.
 PHILO D. BEARD ET AL., Defendants. }

The replication of Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois; Buckstaff Brothers Manufacturing Company, Henry S. Carroll, for himself and the Clarksville Paper Company, F. J. Diem, Freeman Graham, Jr., Julius Graham, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson to the separate answer of the defendant Emanuel Stein to the cross-bill filed herein.

204 These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver and prove their said cross-bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto; confessed and avoided, traversed or denied, is true; all which matters and things these repliants are, and will be, ready to aver and prove, as this honorable court shall direct; and humbly pray, as in and by their said cross-bill they have already prayed.

BLUFORD WILSON AND
 OTTO GRESHAM,
Solicitors for Cross-complainants.

(Endorsed :) Filed Aug. 1, 1895. S. W. Burnham, clerk.

Replication to Joint Answer of Dupee et al.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ^{ss:}

In the Circuit Court of the United States for the Northern District
 of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and OVID B. Jameson, Trustees, Complainants,	} Bill. In Equity. 23614-832.
<i>vs.</i>	
THE COLUMBIA STRAW PAPER COMPANY, De- fendants.	

HARRY W. DICKERMAN ET AL., Complainants,	} Cross-bill.
<i>vs.</i>	
PHILO D. BEARD ET AL., Defendant.	

The replication of the cross-complainants, Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois; Buckstaff Brothers Manufacturing Company; Henry S. Carroll, for himself and the Clarksville Paper Company; F. J. Diem, Freeman Graham, Jr., Julius Graham; E. P. Hooker, trustee for
 205 the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, to the joint and several answers of Charles A. Dupee, Noble B. Judah, Monroe L. Willard, and Henry M. Wolf, defendants, to the cross-bill filed herein.

These repliants, saving and reserving to themselves all, and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto say, that they will aver and prove their said cross-bill to be true, certain, and sufficient in the law to be answered unto; and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answers contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are, and will be, ready to aver and prove, as this honorable court shall direct; and humbly pray, as in and by their said cross-bill they have already prayed.

BLUFORD WILSON AND
 OTTO GRESHAM,
Solicitors for Cross-complainants.

(Endorsed:) Filed Aug. 1, 1895. S. W. Burnham, clerk.

Afterwards to wit: on the fourteenth day of August, 1895, came Randolph Guggenheimer, Samuel Untermeyer, Maurice Untermeyer and Moses Weinman sued as Moses Weiman, and filed in the clerk's

office of said court their joint and several answer to the cross-bill of Harry W. Dickerman, trustee, *et al.*, which said answer is in words and figures following to wit:

206 *Answer of Guggenheimer et al. to Cross-bill.*

Answer of Randolph Guggenheimer *et al.*

UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division, } ss:

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY ET AL., Com-plainants,	} Bill. Gen. No.,
vs.	
COLUMBIA STRAW PAPER COMPANY ET AL., De-fendants.	23614.

HARRY W. DICKERMAN, Trustee, ET AL.	} Cross-bill.
vs.	
THE NORTHERN TRUST COMPANY ET AL.	

The joint and several answer of Randolph Guggenheimer, Samuel Untermeyer, Maurice Untermeyer, and Moses Weinman, sued as Moses Weiman, to the cross-bill of Harry W. Dickerman, trustee, *et al.*

The above cross defendants reserving to themselves all right and benefit of exception to the said cross-bill for answer thereto say: that they deny each and all of the substantial allegations upon which the said cross-complainants base their right to belief herein.

And these defendants move the court for leave to hereafter file a more detailed answer to said cross-bill, or to demur thereto as they may see fit.

RANDOLPH GUGGENHEIMER,
SAMUEL UNTERMAYER,
MAURICE UNTERMAYER, AND
MOSES WEINMAN,
By DUPEE, JUDAH, WILLARD & WOLF,
Their Attorneys.

DUPEE, JUDAH, WILLARD & WOLF,
Solicitors for said Cross-defendants.

(Endorsed :) Filed Aug. 14, 1895. S. W. Burnham, clerk.

207 On the same day, to wit, the fourteenth day of August, 1895, came James Flanagan by his solicitors and filed in the clerk's office of said court his demurrer to the cross-bill of complaint of Harry W. Dickerman, which said demurrer is in the words and figures following, to wit:

Demurrer of Flanagan et al. to Cross-bill.

Demurrer of James Flanagan to cross-bill of Harry W. Dickerman, trustee, *et al.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, Northern Division, }

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and OVID B. Jameson, as Trustees, Complainants, } Original Bill.
vs. } Gen. No., 32614;
COLUMBIA STRAW PAPER COMPANY, Defendant. } Term No., 832.

HARRY W. DICKERMAN, as Trustee, etc., ET AL., }
Cross-complainants, }
vs. } Cross-bill.
THE NORTHERN TRUST COMPANY ET AL., Cross-defendants. }

The demurrer of James Flanagan, one of the defendants, to the cross-bill of complaint of Harry W. Dickerman *et al.*, cross-complainants.

This defendant, by protestation, not confessing or acknowledging any or all of the matters and things in the said cross-complainants' cross-bill to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer show that the said cross-complainants have not, in and by said cross-bill, made or stated such a case as doth or ought to entitle them to any such discovery or relief as is thereby sought and prayed for from or against this defendant.

208 Wherefore this defendant demands the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

DUPEE, JUDAH, WILLARD & WOLF,
Solicitors for said Defendant.

STATE OF MASSACHUSETTS, } ss:
County of Berkshire, }

James Flanagan, a defendant to the cross-bill in said cause, being first duly sworn, on oath says that the foregoing demurrer is not interposed for delay.

JAMES FLANAGAN.

I, F. N. Deland, a notary public in and for the county of Berkshire, in the State of Massachusetts, do hereby certify that the above and foregoing affidavit was subscribed and sworn to before me by James Flanagan on this eleventh day of August, 1895, and that I am duly authorized by the laws of the State of Massachusetts to administer oaths.

F. N. DELAND,
Notary Public in and for Berkshire County,
Massachusetts.

[SEAL.]

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

MONROE L. WILLARD,
Of Counsel for Defendants.

(Endorsed :) Filed August 14, 1895. S. W. Burnham, clerk.

209 On the same day, to wit, the fourteenth day of August, 1895, came Salomon Marx, by his solicitors, and filed in the clerk's office of said court his demurrer to the cross-bill of Harry W. Dickerman, which said demurrer is in the words and figures following, to wit :

Demurrer of S. Marx to Cross-bill.

Demurrer of Salomon Marx to cross-bill of Harry W. Dickerman, trustee, *et al.*

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ss :

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and OVID B. Jameson, as Trustees, Complainants, <i>vs.</i> COLUMBIA STRAW PAPER COMPANY, Defendant.	}	Original Bill. Gen. No., 32614 ; Term No., 832.
HARRY W. DICKERMAN, as Trustee, etc., ET AL., Cross-complainants, <i>vs.</i> THE NORTHERN TRUST COMPANY ET AL., Cross-defendants.	}	Cross-bill.

The demurrer of Salomon Marx, one of the defendants, to the cross-bill of complaint of Harry W. Dickerman *et al.*, cross-complainants.

This defendant, by protestation, not confessing or acknowledging any or all of the matters and things in the said cross-complainants' cross-bill to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of

demurrer show that the said cross-complainants have not in and by said cross-bill, made or stated such a case as doth or ought to entitle them to any such discovery or relief as is thereby sought and prayed for from or against this defendant.

210 Wherefore this defendant demands the judgment of this honorable court, whether he shall be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

DUPEE, JUDAH, WILLARD & WOLF,
Solicitors for said Defendant.

STATE OF NEW YORK, }
County of New York, } ss :

Salomon Marx, a defendant to the cross-bill in said cause, being each first duly sworn, on oath says that the foregoing demurrer is not interposed for delay.

SALOMON MARX.

I, Abraham Legenwood, a notary public in and for the county of New York, in the State of New York, do hereby certify that the above and foregoing affidavit was subscribed and sworn to before me, by Salomon Marx, on this 13th day of August, 1895, and that I am duly authorized by the laws of the State of New York to administer oaths.

[SEAL.] ABRAHAM LEGENWOOD,
Notary Public in and for New York County,
New York.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

MONROE L. WILLARD,
Of Counsel for Defendants.

(Endorsed :) Filed August 14, 1895. S. W. Burnham, clerk.

211 Afterwards, to wit : on the twentieth day of August, 1895, came Samuel Untermeyer, by his solicitors, and filed in the clerk's office of said court his answer to the cross-bill of complaint of Harry W. Dickerman, trustee, *et al.*, which said answer is in the words and figures following, to wit :

Answer of Untermeyer to Cross-bill.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and Ovid B. Jameson, Trustees, Com- plainants,	} In Equity. Gen. No., 32614; Term No., 832.
vs.	
THE COLUMBIA STRAW PAPER COM- pany, Defendant.	}

The answer of Samuel Untermeyer, one of the cross-defendants, to the cross-bill of Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois; Buckstaff Brothers Manufacturing Company, Henry S. Carroll, for himself and the Clarks-ville Paper Company; Fred J. Diem, Freeman Graham, Jr., Julius Graham, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, defendants.

The cross-defendant now, and at all times hereafter, saving to himself all and all manner of benefit or advantage of exception or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said cross-bill contained, for answers thereto, or to so much thereof as this defendant is advised is material or necessary for him to make answer to, answering says:

That he does not know whether said cross-complainants are the owners of shares of stock of the Columbia Straw Paper Company as set forth in said bill of complaint, or of any stock in said company, and he therefore leaves cross-complainants to make such proof thereof as he is advised is material or necessary.

This defendant, further answering says, that he is informed and believes said cross-complainants as such stockholders did participate in or acquiesce in all the acts done by other stockholders in said company and in said cross-bill complained of so far as said acts occurred, or that they are transferees of such participating or acquiescing stockholders.

Further answering this defendant says, that it is true that said Northern Trust Company and Ovid B. Jameson, on or about the 24th day of January, 1895, exhibited in this honorable court their bill of complaint against said Columbia Straw Paper Company to foreclose a mortgage as in said cross-bill described and that answers have been filed as in said cross-bill alleged.

This defendant, further answering, denies that he, in the summer of 1892, or at any time, entered into an agreement with any of the parties named in clause three of said cross-bill whereby options or executory contracts for the purchase of certain paper-mill plants were to be obtained if possible on the basis of the payment of so much cash and the balance in the stock of a corporation to be by

them formed of said mills, or that the firm of Guggenheimer & Untermeyer entered into the agreement as in said cross-bill alleged, and he denies that in securing said options representations were made by him or by said firm to the various mill-owners that it was the intention and expectation of the said promoters to secure the control of about seventy mills, or that the corporation so to be formed would be capitalized at \$3,000,000 of common and \$1,000,000 of preferred stock, which said stock was to be issued at par in part payment for said mills at the option prices so obtained until the same was exhausted, and that in such a contingency the corporation so to be organized was to have the power to issue \$1,000,000 of its bonds to complete the payment for said mills, and this defendant further denies that he at any time acted as or was a promoter of said company, or engaged in any way except as counsel in procuring or securing options upon such mills, or any of them, on any terms whatever, and he denies that he or his said firm ever made any representations in regard to such options.

This defendant, further answering, denies that after options had been obtained upon thirty-nine of said mills in the name of said Beard and Ramsdell, this defendant, or either of them, he met with the parties named in clause three of said cross-bill, and decided that it would be necessary to provide \$1,000,000 to purchase said property and furnish the running capital, but he admits that it was understood that it would be necessary to raise \$1,000,000 in cash in order to carry out the plans of the promoters.

This defendant, further answering, denies that the firm of Guggenheimer & Untermeyer, of which firm he is a member, 213 submitted to their friends of New York, named on page seven of said cross-bill, or to any of them, the plan described in said cross-bill at page seven thereof, and he denies that the said persons thereupon appointed the said firm of Guggenheimer & Untermeyer their agents to act for them in securing bonds and stock of the said company, in the manner charged in said cross-bill, and he denies that said firm of Guggenheimer & Untermeyer agreed to purchase bonds and stock as charged in said cross-bill.

This defendant, further answering, says that he has no knowledge whether said Philo D. Beard submitted to his alleged friends named upon page 8 and 9 of said cross-bill the plan that had been agreed upon by said alleged original promoters, or any plan, or whether said parties appointed said Philo D. Beard their agent, as in said cross-bill of complaint alleged.

This defendant, further answering, says that he does not know whether the said law firm of Dupee, Judah, Willard & Wolf, at or about the same time, or at any time, acting for themselves and as the agent of certain of their friends in Chicago, together with the said Stein, agrees to purchase for themselves, and as such agent, seventy-seven bonds of said Columbia Straw Paper Company for the sum of \$77,000, upon receiving a gratuity of 1,493 full-paid shares of preferred stock and 5,211 full-paid shares of common stock of the said company so to be organized.

This defendant further answering, says that he does not know

whether said John B. Halladay at the same time agreed to purchase for himself bonds of said company, as in said cross-bill alleged; nor does he know whether said Fred. C. Trebein at the same — agreed to purchase for himself bonds, as in said cross-bill of complaint alleged.

This defendant, further answering, denies that after the arrangements alleged in said cross-bill for procuring the bonds and gratuitous stock of said Columbia Straw Paper Company, or at any time, all or any of the said parties named in said cross-bill paid the respective sums of money in said cross-bill mentioned, or any sum, into the hands of said Henry M. Wolf, as trustee, for the purpose of applying the same at the proper time to the purchase of said mills.

This defendant, further answering, denies that the giving of stock of said Columbia Straw Paper Company with said bonds was kept a secret from said cross-complainants, or from any owners of mills who had agreed under their options to sell said mills to said Beard and Ramsdell.

214 This defendant, further answering, on information and belief admits that said Beard and Ramsdell assigned, transferred and set over all their interest in and to options for the purchase of said mills to said Emanuel Stein, but upon what consideration this defendant does not know; but this defendant denies that such transfer was made for the purpose of evading the provisions of the statutes of New Jersey concerning corporations, as in said cross-bill alleged. This defendant is informed and believes that said Stein accepted in writing said options some time during the fall of 1892. He admits that said firm of Dupee, Judah, Willard & Wolf examined the titles to said properties and gave written opinions thereon; that said firm of Guggenheimer & Untermeyer, of which firm this defendant was a member, prepared articles of incorporation for the formation of the Columbia Straw Paper Company; that said articles of incorporation were duly executed, as alleged in said cross-bill, and filed in the office of the secretary of state of New Jersey, as in said cross-bill alleged.

This defendant, further answering, denies that immediately upon the filing of said articles of incorporation the stockholders of said company elected as directors of said company the said Philo D. Beard, Fred C. Trebein, E. Gilbert Church, J. B. Halladay, B. M. Frees, Richard T. Higgins, Emanuel Stein, Augustus P. Brown and William C. Heppenheimer, and this defendant alleges that none of the parties above named were then elected as such directors except said Philo D. Beard and said William C. Heppenheimer, and this defendant denies that thereupon said board of directors met in the office of Guggenheimer and Untermeyer as alleged, and appointed attorneys for said company as in said bill alleged.

This defendant, further answering, admits that said Emanuel Stein on or about the 14th day of December, 1892, made a written proposition to said board of directors to sell and transfer to said company the properties described in the original bill of foreclosure upon the terms in said cross-bill named, and this defendant denies

that said Emanuel Stein was at the time one of the directors of said company, or that he in any way acted for this defendant.

This defendant further answering, upon information and belief denies that at the time of the offer made by said Stein each and every one of the directors, or any of the principals or agents, or any of them, knew that the par value of the shares of stock asked for by said Stein as purchase-money exceeded in amount the value of the property in exchange for which said Stein asked that it should be issued, and he denies that each and every of the said directors,

principals and agents as alleged in said cross-bill had full
215 knowledge of the real value of said property offered by said Stein, or that they disregarded their duty as directors of the defendant company, with an intent to defraud any of the defendants who filed the cross-bill or the mill-owners who were about to become stockholders under said options, or anybody else, or that they in any way disregarded their duty, and he denies that without the knowledge of the said defendants filing the cross-bill, or any of the mill-owners about to become stockholders by virtue of the provisions of said options, they deliberately or fraudulently, or in any way, overvalued said property in the sum of \$2,113,000, and purchased the same from said Stein in the manner and upon the terms proposed by him as alleged in said cross-bill.

This defendant further answering, denies that at the time of the purchase of the said paper mill plants from said Stein by said Columbia Straw Paper Company, the said board of directors or the persons referred to as principals and agents, had full or any knowledge of the original or any agreement for the taking of options from said mill-owners, and he denies that he had any knowledge that said assignment from said Beard and Ramsdell to said Stein was without consideration, or was intended as a means to evade the provisions of the statutes of New Jersey; and he denies that any plan was agreed upon in regard thereto by this defendant with any of the parties named in said cross-bill of complaint as in said cross-bill alleged.

This defendant further answering, denies that the money necessary for the cash purchase of said paper-mill plants and for the running capital of the corporation to be formed, or any of it, was placed in the hands of said Henry M. Wolf, as trustee.

This defendant further answering denies that said Stein accepted said options at the instance or upon request of this defendant, or of the board of directors, and he denies that he or any of the persons charged therewith in the cross-bill knew that any of said directors were elected for the purpose of effecting and accepting said proposition of said Stein for the sale of said paper-mill plants; and he denies that he had any knowledge that the terms of or anything connected with said purchase were to be kept a secret from any owners of said mill plants, or that any matter connected with the whole transaction was to be kept secret from anybody.

This defendant further answering says that he has no knowledge other than is shown by the records of said company as to any purchase by said Beard of bonds and stock of said Columbia Straw

Paper Company, and this defendant has no knowledge as to any purchase of such bonds and stocks by said alleged confederates of said Beard, nor does he know whether the said Beard and his alleged confederates now hold, or as to whether at the time of filing the original bill herein they held such bonds or stock, but the defendant, upon information and belief, denies that — is claimed by the Northern Trust Company and Ovid B. Jameson, trustees, in the original bill of foreclosure that there is due to the said Beard and his said confederates as holders and owners of bonds of said company the sum of \$238,000, or any other sum.

This defendant further answering, says that he has no knowledge as to said alleged indebtedness of said Beard and his alleged confederates to said Columbia Straw Paper Company, and says that he has no knowledge, and he denies on information and belief that any property or assets of any kind were illegally or fraudulently withdrawn from the treasury of the Columbia Straw Paper Company by said parties.

This defendant further answering, says, upon information and belief, that the said law firm of Guggenheimer & Untermeyer for themselves, and as agents for their alleged confederates did not receive, in pursuance of the agreement alleged in the cross-bill 483 of the said bonds sought to be foreclosed in this cause, and that the said firm did not receive as a gratuity, without any consideration therefor, 1,269 full-paid shares of preferred stock, and 5,198 full-paid shares of com-on stock of said company in the manner and form alleged in said cross-bill; and he denies that the said Guggenheimer & Untermeyer and their said confederates are still the owners and holders of said bonds and stock or were such owners and holders at the time of the beginning of this proceeding to foreclose.

But this defendant admits that the individual members of said firm own some of the bonds and some of the stock, preferred and common, of the Columbia Straw Paper Company, but he denies that it is claimed by the Northern Trust Company and Ovid B. Jameson, as trustees, in the original bill of foreclosure, that there is due to the said Beard and his confederates, as holders and owners of the bonds of said company, the sum of 328,000, or any other sum.

This defendant, further answering, upon information and belief denies that it is claimed by the Northern Trust Company and Ovid B. Jameson, trustees, in the original bill of foreclosure that there is due to said Guggenheimer & Untermeyer and their said principals and confederates, as owners and holders of said bonds aforesaid, the sum of \$483,000; and he denies that the said Guggenheimer &

Untermeyer and their alleged confederates now own or are indebted to or hold as trustees for the said Columbia Straw Paper Company or in any other capacity, whatever, the sum of \$126,900 being the par value of the shares of preferred stock, and \$519,800 the par value of the shares of com-on stock, or for any other sum of money whatever. And he denies that any stock, preferred or common, or any property or assets of any kind or nature, whatsoever, were illegally or fraudulently withdrawn by the said firm of Guggenheimer & Untermeyer, or by this defendant, from the

treasury of the said defendant, The Columbia Straw Paper Company, without payment therefor either in money or property or any other way, or in violation of the statutes of the State of New Jersey or of any other State or government.

This defendant, further answering, denies, upon information and belief, that the said Stein of the law firm of Dupee, Judah, Willard and Wolf, for themselves or as agents for any one, received from said Stein in pursuance of said agreement, seventy-seven of said bonds sought to be foreclosed in this case; or that they received as a gratuity, without any consideration therefor, 1,493 full-paid shares of preferred stock, and 5,211 full-paid shares of common stock of said company, in the manner and form alleged in said cross-bill of complaint, and upon information and belief, he denies that the said Stein and the said Dupee, Judah, Willard and Wolf and their alleged confederates are still the owners and holders of said bonds and stock, or were such owners and holders at the time of the beginning of this foreclosure proceeding; and upon information and belief, he denies that it is claimed by the Northern Trust Company and Ovid B. Jameson, as trustees, in the original bill of foreclosure herein, that there is due to the said Stein and the said Dupee, Judah, Willard and Wolf and their confederates, as owners and holders of said bonds aforesaid, the sum of \$77,000, or any other sum; and this defendant says that he has no knowledge as to whether the said Stein and the said Dupee, Judah, Willard and Wolf, or any of them, or any of their alleged confederates, now own or are indebted to or hold as trustees for the said Columbia Straw Paper Company the sum of \$149,300 or \$521,100, or any other sum; and upon information and belief he denies that the said Dupee, Judah, Willard and Wolf, or any or either of them, have illegally or fraudulently, or otherwise, withdrawn any stock or bonds, or money or property, or anything else from the treasury of the said Columbia Straw Paper Company.

This defendant further answering says upon information and belief, that the said Philo D. Beard, as president of the Columbia Straw Paper Company, on or about the 17th day of May, 1893, caused to be filed with the secretary of state a certificate verified by him, under oath, as alleged in the cross-bill, and this defendant in like manner avers that in point of fact the stock of said company has been fully paid for in money or property as required by the statutes of the State of New Jersey.

This defendant, further answering, denies upon information and belief, that the persons named on page 19 of said cross-bill held a controlling interest in the said company at the time alleged in the cross-bill; but this defendant denies that he took any part in the election of said board of directors of the Columbia Straw Paper Company in December, 1892, except that he acted as counsel in organizing, and he denies that at the time he owned any of the stocks of said company, and he says that he has no knowledge that at the time of the filing of the original bill herein the then board of directors of the Columbia Straw Paper Company were acting in manner de-

structive to the corporation and for and on behalf of their own interests.

This defendant further answering, upon information and belief, denies that the execution of said mortgage by the Columbia Straw Paper Company, as alleged in paragraph 111 of the bill of complaint herein, was fraudulent or in violation of the rights of the stockholders, or any of them, of the Columbia Straw Paper Company; and upon information and belief, he denies that said mortgage and the bonds issued thereunder were without consideration to said defendant company, or of no benefit thereto.

This defendant further answering, upon information and belief, denies that any of the provisions of said mortgage or deed of trust of said Columbia Straw Paper Company were corrupt, usurious, unlawful or void.

This defendant, further answering, denies that said Philo D. Deard, as president of said company and said board of directors acting under and pursuant to the advice of said Dupee, Judah, Willard and Wolf, and their associates, Guggenheimer and Untermeyer, attorneys of said company, neglected and refused to pay and discharge six interest coupons on the bonds of James Flanagan, a resident of the city of New York, in order that suit might be instituted thereon; and this defendant says that at said time neither the said firm of Guggenheimer and Untermeyer were the attorneys of the said Columbia Straw Paper Company, nor were they at that time associated together; and this defendant, further answering,

219 alleges that the said firm of Guggenheimer and Untermeyer did not combine or confederate with the said Beard, as president and said directors; and he denies any knowledge as to whether the said firm of Dupee, Judah, Willard and Wolf caused said Flanagan, a resident of the city and State of New York, to institute an action at law in the office of one, George W. Underwood, a justice of the peace, in the manner and form alleged in said cross-bill or as alleged in the said cross-bill.

This defendant, further answering, alleges upon information and belief, that on January 22d, 1895, said Columbia Straw Paper Company was without funds to discharge the coupons due on its bonds on the first day of June and the first day of December, previous thereto, amounting exclusive of interest thereon to \$60,000, and was without resources with which to pay taxes, insurance, labor, materials, supplies, water power, rent and the other approved and long past-due indebtedness of the said company, and by reason thereof the foreclosure of said mortgage became unavoidable and that abundant legal reasons existed for and justified said foreclosure, wholly independent of the entry of the judgment procured by said Flanagan.

This defendant, further answering, denies that the said firm of Dupee, Judah, Willard & Wolf on behalf of the trustees under said mortgage filed in this court a printed bill of complaint prepared by the firm of Guggenheimer & Untermeyer in the city of New York; and allege- upon information and belief that the said bill of complaint herein was prepared by the defendants Dupee, Judah, Willars

and Wolf, in the city of Chicago, and that neither the said complaint nor any copy thereof was ever seen by this defendant, nor as this defendant is informed and believes, by any member of the said firm of Guggenheimer and Untermeyer until some days after the said bill was filed in this court, and this defendant alleges that he never saw a copy of said bill until some time after the same was filed in this court.

This defendant, further answering, denies that the transaction complained of in paragraph VI of the cross-bill herein was a fraudulent or collusive act of the acting managers and attorneys of the said Columbia Straw Paper Company with themselves as bondholders, in order to give their representatives, the trustees herein, the right to begin this foreclosure proceeding.

This defendant, further answering, says that he has no knowledge that said Philo D. Beard, as president of the said Columbia Straw Paper Company and a member of its board of directors, and the other persons named in clause 7 of said cross-bill of complaint
220 loaned out of the treasury of the said company to the said Emanuel Stein the sum of \$114,940.31 as alleged in the said cross-bill of complaint.

This defendant, further answering, says that he has no knowledge that any of the persons or firms named in said clause 8 of cross-bill of complaint have withdrawn from the treasury of said Columbia Straw Paper Company, without reimbursing the same, any bonds or stock whatever; and this defendant says that he has never withdrawn anything from the treasury of the said company nor has he combined or confederated with any one as stated in clause 8 of the said cross-bill.

This defendant further answering, denies that he, either alone or in connection with other persons, formed a corporation known as the Paper Commission Company, and he says that he never had any connection with the Paper Commission Company, except that he and the firm of Guggenheimer and Untermeyer of which firm he is a member, acted as attorneys in incorporating said company, and from time to time during and after its organization; and this defendant denies that he or his firm or any of them at any time received anything more from said Paper Commission Company than a part of reasonable compensation for services rendered by said firm to said company; and this defendant says that he has no knowledge as to the expenses of said Paper Commission Company or said Columbia Straw Paper Company in regard to the sale of paper.

This defendant, further answering, says that he has no knowledge whether the agreement referred to in clause 10 of said cross-bill of complaint was signed by the stockholders of said Columbia Straw Paper Company; and this defendant denies that the rights and interests of said Columbia Straw Paper Company in this litigation are entirely in the hands of and under the control of said trustees or bondholders or have been since the 22d day of March, 1895; and this defendant says that the said trustees never became parties to said agreement or acted thereunder.

This defendant, further answering, denies that he has any knowl-

edge as to whether all the officers and directors of the defendant company are large holders of the bonds sought to be foreclosed by the original bill of complaint; or as to whether all of the officers or directors or any of them have so arranged their affairs in this regard that it will be to their greater advantage to admit without defense the bill of complaint herein; and he denies upon information and belief, that by reason of the attitude of each and every

221 one of said board or any of the said board of directors or by reason of any of the matters or things alleged in clause 11 of the cross-bill of complaint that it would be useless to ask or demand the directors or officers to take proper steps in this proceeding or to set up for the defendant company all of its defenses to the bill of complaint or to secure for said corporation all of the equities to which it is entitled by reason of the matters or things alleged in the complaint.

This defendant, further answering, denies that the firm of Guggenheimer and Untermeyer are or at any time have been solicitors for the said trustees, the complainants herein, either of record or otherwise, or in this action or in any other matter, or that as such solicitors they or any of them prepared the printed bill of complaint herein for the foreclosure of the said mortgage.

This defendant, further answering, denies that he has or his said firm or any of them combined or confederated with Dupee, Judah, Willard and Wolf, with Beard and Stein and with Solomon Marx or with any or either of them for any of the purposes mentioned in clause 12 of said cross-bill, and he denies that George B. Jones, the receiver heretofore appointed in this case, is receiver only of the mortgaged premises or lands in the original bill described, but he says that said Jones is receiver of all the assets covered by said mortgage, and this defendant denies that the persons mentioned in clause 12 of the cross-bill caused proceedings to be instituted in the State of New Jersey, to have said defendant company declared by the chancellor of said State, under the statutes thereof, insolvent, as alleged in clause 12 of the cross-bill, but he denies that he drew the said petition and caused it to be signed by and sworn to by said Solomon Marx or caused it to be filed by other appearing solicitors before said chancellor, or as to whether the said Beard and Stein, as directors of the company admitted before the chancellor at the hearing of the said petition the insolvency of the said company; and he denies any knowledge as to whether the said chancellor was informed or was not informed as to any of the matters alleged in clause 12 of the said cross-bill, and he denies that the object sought in obtaining the appointment of such receiver was to obtain possession of the books and papers of the said Columbia Straw Paper Company, in order to avoid the enforcement of any liability or for any other reason, or for any of the purposes alleged in clause 12 of said cross-bill.

This defendant, further answering, denies upon information and belief that the said receiver herein has acted under the direction of the said firm of Herrick, Allen & Boyesen, attorneys in this
222 proceeding for the said Columbia Straw Paper Company, and he denies that he has been subject to the instruction of

the board of directors of the said company, or any of the trustees herein.

This defendant admits that the said receiver has no actual or practical knowledge of the manufacture of paper, and he avers that such knowledge is in no way necessary, and this defendant avers that the said receiver has taken actual possession of the property included in the said mortgage, and has acted under the direction of this court in regard thereto.

This defendant, further answering, says that in the summer of 1892 the law firm of Guggenheimer & Untermeyer, of which he was a member, was employed by Emanuel Stein and Philo D. Beard to assist in the organization of the said company and to furnish and procure the cash which it was necessary to pay on account of the purchase of the various plants that were to be sold to the Columbia Straw Paper Company; that this defendant, on behalf of his said firm, and with the assistance of some of its members and a large part of the office force, undertook to carry out the said employment, and received from the parties by whom he was employed certain of the bonds and a portion of the preferred and common stock which had been issued in payment for the various properties; that such services rendered as aforesaid were worth fully the amount which was paid to this defendant for and on behalf of himself and his said firm, and that at the time of the receipt of said bonds and stock certificates by him, this defendant believed that said bonds as well as said stock had been fully paid, as they purported to be.

This defendant, further answering, says that when or soon after the time that his said firm was called upon to act as attorney in the premises, and before they became either bondholders or stockholders in the said Columbia Straw Paper Company, they were informed by the parties in interest that the daily productive capacity of the mills about to be purchased was about three hundred and thirty-nine tons; that the product was of stable commercial value, and that the then yearly consumption in the country of the produce manufactured by the mills was ninety thousand tons, and was increasing at the rate of about ten thousand tons per annum; that the mills, from their location, their proximity to the straw-producing regions, and the consequent cheapness of manufacture, *would control most of the market, at least ninety seven per cent. thereof*; that — could probably sell ninety thousand tons per annum; that the paper had been manufactured at \$18 per ton by corporations, and

223 that in this price was reckoned all the salaries of officers; that by saving in salaries, economy in railroad transportation and buying to advantage, the cost price could be reduced to about \$16 per ton; that the average selling price for nine years had been \$26.83 per ton; that for 1891 the selling price was \$30 per ton; that even calling the cost of production \$18, and the selling price \$26, the profits upon ninety thousand tons would be \$720,000 per annum; that this would provide a sinking fund of \$110,000 per annum, and pay \$60,000 interest upon \$1,000,000 of bonds, \$80,000 upon \$1,000,000 of preferred stock, and leave \$470,000 to

apply on \$3,000,000 of common stock, which would be upwards of fifteen and a half per cent.; that should the sales be but sixty thousand tons yearly, and the selling price but \$26 per ton, still the amount of profit would be \$480,000 per annum, which — put into the sinking fund \$110,000 per annum, pay six per cent. on a million dollars bonds, eight per cent. of \$1,000,000 preferred, and more than six per cent. on \$3,000,000 common stock; that the foregoing are only some of the statements and representations which were made to this defendant.

That relying upon said representations and in order to accomplish the object for which the said firm was employed, the individuals who composed the said firm purchased \$265,000 of bonds of the said Columbia Straw Paper Company from said Stein; that is to say, Randolph Guggenheimer purchased 115 of said bonds, and paid therefor the sum of \$115,000 in cash; the defendant, Isaac Untermeyer purchased 50 of said bonds, and paid \$50,000 therefor in cash; the defendant, Maurice Untermeyer, purchased 35 of said bonds, and paid \$35,000 therefor in cash; and the defendant, Moses Weinman, purchased 15 of said bonds, and paid therefor \$15,000 in cash, and this defendant purchased 50 of said bonds, and paid therefor \$50,000 in cash, and with the said bonds and as a part of such purchase the said persons acquired a certain amount of common stock and a certain portion of the preferred stock, which was allotted with the bonds; that at about the time of the said purchases this defendant, on behalf of his firm, negotiated the sale of certain of said bonds of said Columbia Straw Paper Company to other parties for owners thereof, relying entirely upon the representations that were made to him, and received for the purchasers certain of the preferred and common stock allotted with the said bonds; and that this defendant believed and still believes that the said bonds and stock has been fully paid, and that the parties from whom this defendant received them had good title thereto, and good right to dispose of them.

That in order to accomplish the purpose of the Columbia Straw Paper Company, it was necessary to secure the payment of
224 notes aggregating \$— which had been given by the company in part payment for the various plants and properties they had purchased, and this defendant, acting for himself and for certain other members of his firm, pledged as security for the payment of said notes, bonds aggregating \$— which they had actually purchased and paid for in cash.

And this defendant, further answering, submits that the cross-complainants have not by the said cross-bill entitled themselves to any equitable relief against this defendant, and this defendant accordingly claims the same benefit from this, his answer, as if he had demurred to said cross-bill.

This defendant denies all and all manner of unlawful combination and confederacy whereof he is by said cross-bill charged with-out this, that there is any other matter, cause or thing in said cross-bill of complaint contained material or necessary for this defendant to make answer unto and not herein or hereby well and sufficiently

answered, confessed, traversed, avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

SAMUEL UNTERMEYER,
By DUPEE, JUDAH, WILLARD & WOLF,
His Attorneys.

DUPEE, JUDAH, WILLARD & WOLF,
Solicitors and of Counsel for Defendant.

CITY AND COUNTY OF NEW YORK, ss:

On this 12th day of August, one thousand eight hundred and ninety-five, before me personally appeared Samuel Untermeyer who *each of them* made solemn oath that he had seen the foregoing answer and knew the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and that as to those matters he believes the same to be true.

SAM'L UNTERMYER.

Sworn to before me this 12th day of August, 1895.

[SEAL.]

B. BENJ. SCHIFF,
Notary Public, Kings County.

Certificate filed in N. Y. county.

(Endorsed :) Filed August 20, 1895. S. W. Burnham, clerk.

225 On the same day, to wit: the twentieth day of August, 1895, came Randolph Guggenheimer and Isaac Untermeyer, two of the cross-defendants to the cross-bill of Harry W. Dickerman, trustee, *et al.* and filed their answer to said cross-bill, which said answer is in the words and figures following, to wit:

Answer of Guggenheimer et al. to Cross-bill.

Joint and several answer of Randolph Guggenheimer and Isaac Untermeyer to cross-bill of Harry W. Dickerman, trustee, *et al.*

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and OVID B. Jameson, Trustees, Complainants,	} In Equity. Gen. No., 32614; Term No., 832.
<i>vs.</i>	
THE COLUMBIA STRAW PAPER COMPANY, De- fendant.	

The joint and several answers of Randolph Guggenheimer and Isaac Untermeyer, two of the cross-defendants, to the cross-bill of Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois; Buckstaff Brothers Manufacturing Company, Henry S. Carroll, for himself and the Clarksville Paper Company; Fred J. Diem, Freeman Graham, Jr., Julius Graham, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, defendants.

These cross-defendants, respectively, now and at all times hereafter saving to themselves all and all manner of benefit or advantage of exception or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said cross-bill contained, for answers thereto or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answering say :

That they do not know whether said cross-complainants are the owners of shares of stock of the Columbia Straw Paper Company as set forth in said bill of complaint, or of any stock in said 226 company, and they therefore leave cross-complainants to make such proof thereof as they are advised is material or necessary.

These defendants, further answering, say that as they are informed and believe said cross-complainants as such stockholders did participate in or acquiesce in all the acts done by other stockholders in said company and in said cross-bill complained of so far as said acts occurred, or that they are transferees of such participating or acquiescing stockholders.

Further answering, these defendants say that it is true that said Northern Trust Company and Ovid B. Jameson — or about the 24th day of January, 1895, exhibited in this honorable court their bill of complaint against said Columbia Straw Paper Company, to foreclose a mortgage as in said cross-bill described, and that answers have been filed as in said cross-bill alleged.

These defendants, further answering, deny that these defendants or either of them, in the summer of 1892, or at any time, entered into an agreement with any of the parties named in clause 3, of

said cross-bill, whereby options or executory contracts for the purchase of certain paper mill plants were to be obtained if possible on the basis of the payment of so much cash and the balance in the stock of a corporation to be by them formed of said mills, or that the firm of Guggenheimer & Untermeyer entered into the agreement as in said cross-bill alleged; and they deny that in securing said options representations were made by them to the various mill-owners that it was the intention and expectation of the said promoters to secure the control of about seventy mills, or that the corporation so to be formed would be capitalized at \$3,000,000 of common and \$1,000,000 of preferred stock, which said stock was to be issued at par in part payment for said mills at the option prices so obtained until the same was exhausted, and that in such a contingency the corporation so to be organized was to have the power to issue \$1,000,000 of its bonds to complete the payment for said mills; and these defendants further deny that they or either of them, at any time acted as or were promoters of said company, and engaged in any way procuring or securing options upon such mills, or any of them, on any terms whatever, and they deny that they ever made any representations in regard to such options.

These defendants, further answering, deny that after options had been obtained upon thirty-nine of said mills in the name of said Beard and Ramsdeil, these defendants, or either of them, met with the parties named in clause 3 of said cross-bill, and decided
227 that it would be necessary to provide \$1,000,000 to purchase said property and furnish the running capital.

These defendants, further answering, deny that the firm of Guggenheimer & Untermeyer, of which firm they are members, submitted to their friends in New York, named upon page 7 of said cross-bill, or to any of them, the plan described in said cross-bill at page 7 thereof, and they deny that the said persons thereupon appointed the said firm of Guggenheimer & Untermeyer their agents to act for them in securing bonds and stocks of the company, in the manner charged in said cross-bill, and they deny that said firm of Guggenheimer & Untermeyer agreed to purchase bonds and stock as charged in said cross-bill.

These defendants, further answering, say that they have no knowledge whether said Philo D. Beard submitted to his alleged friends, named upon pages 8 and 9 of said cross-bill, the plan that had been agreed upon by said alleged original promoters, or any plan, or whether said parties appointed said Philo D. Beard their agent, as in said cross-bill of complaint alleged.

These defendants, further answering, say, that they do not know whether the said law firm of Dupee, Judah, Willard & Wolf, at or about the same time, or at any time, acting for themselves and as the agent of certain of their friends in Chicago, together with the said Stein, agreed to purchase for themselves, and as such agent, 77 bonds of said Columbia Straw Paper Company, for the sum of \$77,000, upon receiving a gratuity of 1,493 full-paid shares of preferred stock, and 5,211 full-paid shares of common stock of the said company so to be organized.

These defendants, further answering, say that they do not know whether said John B. Halladay, at the same time, agreed to purchase for himself bonds of said company as in said cross-bill alleged, nor do they know whether said Fred C. Trebein at the same time agreed to purchase for himself bonds as in said cross-bill of complaint alleged.

These defendants, further answering, upon information and belief, deny that after the arrangements alleged in said cross-bill for procuring the bonds and gratuitous stock of said Columbia Straw Paper Company, or at any time, all or any of the said parties named in said cross-bill paid the respective sums of money in cross-bill mentioned, or any sum, into the hands of the said Henry M. Wolf, as trustee, for the purpose of applying the same at the proper time to the purchase of said mills.

228 These defendants, further answering, on information and belief, deny that the giving of stock of said Columbia Straw Paper Company with said bonds was kept a secret from said cross-complainants, or from any owners of mills who had agreed under their options to sell such mills to said Beard and Ramsdell.

These defendants, further answering, on information and belief, admit that said Beard and Ramsdell assigned, transferred and set over all their interest in and to options for the purchase of such mills to said Emanuel Stein, but upon what consideration these defendants do not know, but these defendants deny that such transfer was made for the purpose of evading the provisions of the statutes of New Jersey concerning corporations, as in said cross-bill alleged. These defendants are informed and believe that said Stein accepted in writing said options some time during the fall of 1892. They admit that said firm of Dupee, Judah, Willard & Wolf examined the titles to said properties, and gave written opinions thereon; that said firm of Guggenheimer & Untermeyer, of which firm these defendants were members, prepared articles of incorporation for the formation of the Columbia Straw Paper Company; that said articles of incorporation were duly executed as alleged in said cross-bill, and filed in the office of the secretary of the State of New Jersey, as in said cross-bill alleged.

These defendants further answering, deny that immediately upon the filing of said articles of incorporation the stockholders of said company elected as directors of said company the said Philo D. Beard, Fred C. Trebein, E. Gilbert Church, J. B. Halladay, B. M. Frees, Richard T. Higgins, Emanuel Stein, Augustus P. Brown and William C. Heppenheim, and these defendants allege that none of the parties above named were then elected as such directors except said Philo D. Beard and said William C. Heppenheim, and these defendants deny that thereupon said board of directors met in the office of Guggenheimer & Untermeyer, as alleged, and appointed attorneys for said company as in said bill alleged.

These defendants, further answering, admit that said Emanuel Stein, on or about the 14th day of December, 1892, made a written proposition to said board of directors to sell and transfer to said company the properties described in the original bill of foreclosure

upon the terms in said cross-bill named, and these defendants deny that said Emanuel Stein was at that time one of the directors of said company, or that he in any way acted for these defendants, or any or either of them.

These defendants further answering, upon information and belief deny that at time of the offer made by the said Stein, each
229 and every one of the directors and the principals and agents, or that any of them, knew that the par value of the shares of stock asked for by said Stein as purchase money exceeded in amount the value of the property in exchange for which said Stein asked that it should be issued, and they deny that each and every of the said directors, principals and agents as alleged in said cross-bill had full knowledge of the real value of said property offered by said Stein, or that they disregarded their duty as directors of the defendant company, with an intent to defraud any of the defendants who filed the cross-bill, or the mill-owners who were about to become stockholders under said options, or anybody else, or that they in any way disregarded their duty; and they deny that without knowledge of the said defendants filing the cross-bill, or any of the mill-owners about to become stockholders by virtue of the provisions of said options, they deliberately or fraudulently, or in any way, overvalued the said property in the sum of \$2,113,000, and purchased the same from said Stein in the manner and upon the terms proposed by him as alleged in said cross-bill.

These defendants, further answering, deny that at the time of the purchase of said paper mill plants from said Stein by said Columbia Straw Paper Company, the said board of directors or any of the persons referred to as principals or agents in said cross-bill, or any or either of them, had full or any knowledge of the original or any agreement for the taking of options from said mill-owners, and they deny that they or either of them had any knowledge that said assignment from said Beard and Ramsdell to said Stein was without consideration, or was intended as a means to evade the provisions of the statutes of New Jersey; and they deny that any plan was agreed upon in regard thereto between these defendants, or either of them, with any of the parties named in said cross-bill of complaint, as in said cross-bill alleged.

These defendants further answering, upon information and belief deny that the money necessary for the cash purchase of said paper mill plants and for the running capital of the corporation to be formed, or any of it, was placed in the hands of said Henry M. Wolf, as trustee.

These defendants, further answering, deny that said Stein accepted said options at the instance or upon the request of these defendants or either of them, and they deny that they or either of them knew that any of said directors were elected for the purpose of effecting and accepting said proposition of said Stein for the sale of said paper mill plants.

230 And they deny that they or either of them had any knowledge that the terms of or that anything connected with said purchase was to be kept secret from any of the owners of said mill

plants, or that any matter connected with the whole transaction was to be kept secret from anybody.

These defendants, further answering, say that they have no knowledge other than is shown by the records of said company, as to any purchase by said Beard, of bonds and stock of said Columbia Straw Paper Company, and these defendants have no knowledge as to any purchase of such bonds and stocks by said alleged confederates of said Beard, nor do they know whether the said Beard and his confederates now hold, or as to whether at the time of the filing of the original bill herein, they held such bonds or stock, but these defendants upon information and belief deny that it is claimed by the Northern Trust Company and Ovid B. Jameson, trustees in the original bill of foreclosure, that there is due to the said Beard and his said confederates as holders and owners of bonds of said company the sum of \$238,000 or any other sum.

These defendants, further answering, say that they have no knowledge as to said alleged indebtedness of said Beard and his alleged confederates to said Columbia Straw Paper Company, and they say that they have no knowledge, and they deny on information and belief that any property or assets of any kind were illegally or fraudulently withdrawn from the treasury of the Columbia Straw Paper Company by said parties.

These defendants, further answering, say upon information and belief, that said law firm of Guggenheimer & Untermeyer for themselves, and as agents for their alleged confederates, did not receive, in pursuance of the agreement alleged in the cross-bill, 483 of the said bonds sought to be foreclosed in this cause, and that the defendants did not receive as a gratuity, without any consideration therefor, 1,269 full-paid shares of preferred stock, and 5,198 full-paid shares of common stock of said company in the manner and form alleged in said cross-bill; and they deny, upon information and belief, that the said Guggenheimer & Untermeyer and their said confederates are still the owners and holders of said bonds and stock or were such owners and holders at the time of the beginning of this proceeding to foreclose. But these defendants admit that the individual members of said firm own some of the bonds and some of the stock, preferred and common, of the Columbia Straw Paper Company, but they deny that it is claimed by the Northern Trust

Company and Ovid B. Jameson, as trustees, in the original
231 bill of foreclosure that there is due to the said Beard and his said confederates, as holders and owners of the bonds of said company, the sum of \$238,000, or any other sum.

These defendants, further answering, upon information and belief, deny that it is claimed by the Northern Trust Company and Ovid B. Jameson, trustees, in the original bill of foreclosure that there is due to said Guggenheimer & Untermeyer and their said principals and confederates, as owners and holders of said bonds aforesaid, the sum of \$483,000; and they deny that the said Guggenheimer & Untermeyer and their alleged confederates now owe or are indebted to, or hold as trustees for the said Columbia Straw Paper Company, or in any capacity whatever, the sum of \$126,900,

being the par value of the shares of preferred stock, and \$519,800, the par value of the shares of common stock, or for any other sum of money whatsoever. And they deny that any stock, preferred or common, or any property or assets of any kind or nature whatsoever were illegally or fraudulently withdrawn by the said firm of Guggenheimer & Untermyer, or by these defendants, from the treasury of the said defendant, The Columbia Straw Paper Company, without payment therefor, either in money or property, or in any other way, or in violation of the statutes of the State of New Jersey, or of any other State or government.

These defendants, further answering, deny upon information and belief that the said Stein and the said law firm of Dupee, Judah, Willard & Wolf, for themselves or as agents for any one, received from said Stein, in pursuance of said agreement 77 of said bonds sought to be foreclosed in this case; and they deny that they received as a gratuity without any consideration therefor, 1,493 full-paid shares of preferred stock, and 5,211 full-paid shares of common stock of said company in the manner and form alleged in said cross-bill of complaint. And upon information and belief they deny that the said Stein and the said Dupee, Judah, Willard & Wolf and their alleged confederates are still the owners and holders of said bonds and stock, or were such owners and holders at the time of the beginning of this foreclosure proceeding; and upon information and belief they deny that it is claimed by the Northern Trust Company and Ovid B. Jameson, as trustees, in the original bill of foreclosure herein, that there is due to the said Stein and the said Dupee, Judah, Willard & Wolf and their confederates, as owners and holders of said bonds aforesaid, the sum of \$77,000 or any other sum; and these defendants say that they have no knowledge as to whether the said Stein and the said Dupee, Judah, Willard & Wolf or any of them, or any of their alleged confederates,

now owe or are indebted to or hold as trustees for the said
232 Columbia Straw Paper Company the sum of \$149,300 or \$521,100 or any other sum; and upon information and belief they deny that the said Dupee, Judah, Willard & Wolf or any or either of them have illegally or fraudulently or otherwise withdrawn any stock or bonds or money or property or anything else from the treasury of the said Columbia Straw Paper Company.

These defendants, further answering, say upon information and belief that the said Philo D. Beard, as president of the Columbia Straw Paper Company, on or about the 17th day of May, 1893, caused to be filed with the secretary of state a certificate verified by him, under oath, as alleged in the said cross-bill, and these defendants in like manner aver that in point of fact the stock of said company has been fully paid for in money or property as required by the statutes of the State of New Jersey.

These defendants, further answering, deny upon information and belief that the persons named on page 19 of said cross-bill held a controlling interest in the said company at the time alleged in said cross-bill; but these defendants deny that they or either of them took any part in the election of said board of directors of the

Columbia Straw Paper Company in December, 1892, and they deny that at the time they owned any of the stock of said company, and they say that they have no knowledge that at the time of the filing of the original bill herein, the then board of directors of the Columbia Straw Paper Company were acting in a manner destructive to the corporation and for and on behalf of their own interests.

These defendants, further answering, upon information and belief deny that the execution of said mortgage by the Columbia Straw Paper Company as alleged in paragraph 111 of the bill of complaint herein was fraudulent or in violation of the rights of the stockholders or any of them of the Columbia Straw Paper Company; and upon information and belief they deny that said mortgage and the bonds issued thereunder were without consideration to the said defendant company or of no benefit thereto.

These defendants, further answering, upon information and belief, deny that any of the provisions of said mortgage or deed of trust of said Columbia Straw Paper Company were corrupt, usurious, unlawful or void.

These defendants, further answering, deny that said Philo D. Beard, as president of said company and said board of directors acting under and pursuant to the advice of the said Dupee, Judah, Willard and Wolf and their associates, Guggenheimer and Untermeyer, attorneys of said company, neglected and refused to pay and
233 discharge six interest coupons on the bonds of James Flanagan, a resident of the city of New York, in order that suit might be instituted thereon; and these said defendants say that at said time neither the said firm of Dupee, Judah, Willard and Wolf, nor the said firm of Guggenheimer and Untermeyer were the attorneys of the said Columbia Straw Paper Company, nor were they at that time associated together; and upon information and belief, these defendants further answering, allege that the said firm of Guggenheimer & Untermeyer did not combine or confederate with the said Beard, as president, and said directors, and they deny any knowledge as to whether the said firm of Dupee, Judah, Willard and Wolf caused said Flanagan, a resident of the city and State of New York, to institute an action at law in the office of one George W. Underwood, a justice of the peace, in the manner and form alleged in said cross-bill, or as alleged in the said cross-bill.

These defendants further answering, allege upon information and belief that on January 22d, 1895, said Columbia Straw Paper Company was without funds to discharge the coupons due on its bonds on the first day of June and the first day of December, previous thereto, amounting, exclusive of interest thereon, to \$60,000, and was without resources with which to pay taxes, insurance, labor, materials, supplies, water power, rent and the other approved and long past-due indebtedness of the said company, and by reason thereof, the foreclosure of said mortgage became unavoidable, and that abundant legal reasons existed for and justified said foreclosure, wholly independent of the entry of the judgment procured by said Flanagan.

These defendants, further answering, deny that the said firm of

Dupee, Judah, Willard and Wolf, on behalf of the trustees under said mortgage, filed in this court a printed bill of complaint prepared by the firm of Guggenheimer & Untermeyer in the city of New York; and allege upon information and belief that the said bill of complaint herein was prepared by the defendants, Dupee, Judah, Willard and Wolf, in the city of Chicago, and that neither the said complaint nor any copy thereof was ever seen by the said firm of Guggenheimer & Untermeyer until some days after the said bill was filed in this court; and these defendants allege that they never saw a copy of said bill until some time after the same was filed in this court.

These defendants, further answering, deny that the transaction complained of in paragraph VI of the cross-bill herein was a fraudulent or collusive act of the acting managers and attorneys of the said Columbia Straw Paper Company with themselves as
234 bondholders, in order to give their representatives, the trustees herein, the right to begin this foreclosure proceeding.

These defendants, further answering, say that they have on knowledge that said Philo D. Beard, as president of the said Columbia Straw Paper Company and a member of its board of directors, and the other persons named in clause 7 of the said cross-bill of complaint loaned out of the treasury of said company to the said Emanuel Stein the sum of \$114,940.31 as alleged in the said cross-bill of complaint.

These defendants, further answering, say that they have no knowledge that any of the persons or firms named in said clause 8 of the cross-bill of complaint have withdrawn from the treasury of said Columbia Straw Paper Company, without reimbursing the same, any bonds or stocks whatever; and these defendants say that neither they nor either of them have ever withdrawn anything from the treasury of the said company, nor have they combined or confederated with any one, as stated in clause 8 of the said cross-bill.

These defendants, further answering, deny that they or either of them, either by themselves or in connection with other persons formed a corporation known as the Paper Commission Company, and they say that these defendants never had any connection with the Paper Commission Company, except that the firm of Guggenheimer & Untermeyer, of which firm these defendants are members, acted as attorneys in incorporating said company, and from time to time acted as its attorneys for the business of said company for some time during and after its organization; and these defendants deny that they or either of them at any time received anything more from said Paper Commission Company than a part of reasonable compensation for services rendered by said firm to said company; and these defendants say that they have no knowledge as to the expenses of said Paper Commission Company or said Columbia Straw Paper Company in regard to the sale of paper.

These defendants, further answering, say that they have no knowledge whether the agreement referred to in clause 10 of said cross-bill of complaint was signed by the stockholders of said Co-

lumbia Straw Paper Company; and these defendants deny that the rights and interests of said Columbia Straw Paper Company in this litigation are entirely in the hands of and under the control of said trustees or bondholders, or have been since the 22d day of March, 1895; and these defendants say that the said trustees never became parties to said agreement or acted thereunder.

235 These defendants, further answering, deny that they have any knowledge as to whether all the officers and directors of the defendant company are large holders of the bonds sought to be foreclosed by the original bill of complaint, or as to whether all of the officers or directors or any of them have so arranged their affairs in this regard that it will be to their greater advantage to admit without defense the bill of complaint herein, and they deny upon information and belief, that by reason of the attitude of each and every of the said board or any of the said board of directors, or by reason of any of the matters or things alleged in clause 11 of the cross-bill of complaint that it would be useless to ask or demand the directors or officers to take proper steps in this proceeding or to set up for the defendant company all of its defense to the bill of complaint, or to secure for said corporation all of the equities to which it is entitled by reason of the matters or things alleged in the complaint.

These defendants, further answering, deny that the firm of Guggenheimer & Untermeyer are or at any time have been solicitors for the said trustees, the complainants herein, either of record or otherwise, or in this action or any other matter, or that as such solicitors they or any of them prepared the printed bill of complaint herein for the foreclosure of the said mortgage.

These defendants, further answering, deny that they combined or confederated with Dupee, Judah, Willard & Wolf, with Beard and Stein and with Solomon Marx, or with any or either of them, for any of the purposes mentioned in clause 12 of said cross-bill, and they deny that George P. Jones, the receiver heretofore appointed in this case, is receiver only of the mortgaged premises or lands in the original bill described, but they say that he is receiver of all of the assets covered by said mortgage; and these defendants deny that they caused proceedings to be instituted in the State of New Jersey to have said defendant company declared by the chancellor of said State, under the statutes thereof, insolvent, as alleged in clause 12 of the cross-bill, but they deny any knowledge as to whether the said firm of Guggenheimer & Untermeyer drew the said petition and caused it to be signed and sworn to by Solomon Marx or caused it to be filed by other appearing solicitors before said chancellor, or as to whether the said Beard and Stein, as directors of the company, admitted before the chancellor at the hearing of the said petition the insolvency of the said company; and they deny any knowledge as to whether the said chancellor was informed or was not informed as to any of the matters alleged in clause 12 of the said cross-bill; and they deny that the object sought

236 in obtaining the appointment of such receiver was to obtain possession of the books and papers of the said Columbia

Straw Paper Company, in order to avoid the enforcement of any liability or for any other reason, or for any of the purposes alleged in clause 12 of said cross-bill.

These defendants, further answering, deny upon information and belief that the said receiver herein has acted under the direction of the said firm of Herrick, Allen & Boyesen, attorneys in this proceeding for the said Columbia Straw Paper Company; and they deny that he has been subject to the instruction of the board of directors of the said company or any of the trustees herein.

These defendants admit that the said receiver has no actual or practical knowledge of the manufacture of paper, and they aver that such knowledge is in no way necessary; and these defendants aver that the said receiver has taken actual possession of the property included in the said mortgage and has acted under the direction of the court in regard thereto.

And these defendants, further answering, submit that the cross-complainants have not by their said cross-bill entitled themselves to any equitable relief against these defendants or either of them, and these defendants accordingly claim the same benefit from this their answer as if they had demurred to said cross-bill.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they or either of them are by said cross-bill charged, without this, that there is any other matter, cause or thing in the said cross-complainants' said cross-bill of complaint contained material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants; all of which matters and things these defendants are ready and willing to aver, maintain and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

RANDOLPH GUGGENHEIMER,
ISAAC UNTERMYER,

By DUPEE, JUDAH, WILLARD & WOLF,

Their Attorneys.

DUPEE, JUDAH, WILLARD & WOLF,

Solicitors and of Counsel for Defendants.

237 CITY AND COUNTY OF NEW YORK, ss :

On this 13th day of August, one thousand eight hundred and ninety-five, before me personally appeared Randolph Guggenheimer and Isaac Untermeyer, who each of them made solemn oath that he had seen the foregoing answer and knew the contents thereof, and that the same is true of his own knowledge, except as to the matters herein stated on information and belief, and that as to those matters he believes the same to be true.

ISAAC UNTERMYER.
R. GUGGENHEIMER.

Sworn to before me this 13th day of August, 1895.

B. BENJ. SCHIFF,
Notary Public, Kings County.

[SEAL.]

Certificate filed in New York county.

(Endorsed :) Filed August 20, 1895. S. W. Burnham, clerk.

On the same day, to wit: the twentieth day of August, 1895, came Maurice Untermeyer and Moses Weinman, by their solicitors, and filed in the clerk's office of said court their joint and several answers to the cross-bill of Harry W. Dickerman, trustee, *et al.*; which said answer is in the words and figures following, to wit:

Answer of Untermeyer et al. to Cross-bill.

Joint and several answer of Maurice Untermeyer and Moses Weinman to cross-bill of Harry W. Dickerman, trustee, *et al.*

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and OVID	} In Equity. Gen. No., 32614; Term No., 832.
B. Jameson, Trustees, Complainants,	
vs.	
THE COLUMBIA STRAW PAPER COMPANY,	
Defendant.	

The joint and several answers of Maurice Untermeyer and Moses Weinman, two of the cross-defendants, to the cross-bill of Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois; Buckstaff Brothers Manufacturing Company, Henry S. Carroll, for himself and the Clarkville Paper Company; Fred J. Diem, Freeman Graham, Jr., Julius Graham, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, defendants.

These cross-defendants respectively, now and at all times hereafter saving to themselves all and all manner of benefit or advantage of exception or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said cross-bill contained, for answers thereto or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answering say:

That they do not know whether said cross-complainants are the owners of shares of stock of the Columbia Straw Paper Company as set forth in said bill of complaint, or of any stock in said company, and they therefore leave cross-complainants to make such proof thereof as they are advised is material or necessary.

These defendants, further answering, say that as they are informed and believe said cross-complainants as such stockholders did par-

ticipate in or acquiesce in all the acts done by other stockholders in said company and in said cross-bill complained of so far as said acts occurred, or that they are transferees of such participating or acquiescing stockholders.

Further answering, these defendants say that it is true that said Northern Trust Company and Ovid B. Jameson on or about the 24th day of January, 1895, exhibited in this honorable court their bill of complaint against said Columbia Straw Paper Company, to foreclose a mortgage as in said cross-bill described and that answers have been filed as in said cross-bill alleged.

These defendants, further answering, deny that these defendants, or either of them, in the summer of 1892, or at any time, entered into an agreement with any of the parties named in clause 3 of said cross-bill, whereby options or executory contracts for the purchase of certain paper mill plants were to be obtained, if possible, on the basis of the payment of so much cash and the balance in the stock of a corporation to be by them formed of said mills, or that the firm of Guggenheimer & Untermeyer entered into the agreement as in said cross-bill alleged; and they deny that in securing said options, representations were made by them to the various mill-owners that

it was the intention and expectation of the said promoters to 239 secure the control of about seventy mills or that the corporation so to be formed would be capitalized at \$3,000,000 of common and \$1,000,000 of preferred stock, which said stock was to be issued at par in part payment for said mills at the option prices so obtained, until the same was exhausted, and that in such a contingency the corporation so to be organized was to have the power to issue \$1,000,000 of its bonds to complete the payment for said mills; and these defendants further deny that they, or either of them, at any time acted as or were promoters of said company, and engaged in any way procuring or securing options upon such mills, or any of them, on any terms whatever, and they deny that they ever made any representations in regard to such options.

These defendants, further answering, deny that after options had been obtained upon thirty-nine of said mills in the name of said Beard and Ramsdell, these defendants, or either of them, met with the parties named in clause 3 of said cross-bill, and decided that it would be necessary to provide \$1,000,000 to purchase said property and furnish the running capital.

These defendants, further answering, deny that the firm of Guggenheimer & Untermeyer, of which firm they are members, submitted to their friends in New York, named upon page 7 of said cross bill, or to any of them, the plan described in said cross-bill at page 7 thereof; and they deny that the said persons thereupon appointed the said firm of Guggenheimer & Untermeyer their agents to act for them in securing bonds and stocks of the company, in the manner charged in said cross-bill, and they deny that said firm of Guggenheimer & Untermeyer agreed to purchase bonds and stock as charged in said cross-bill.

These defendants, further answering, say that they have no knowledge whether said Philo D. Beard submitted to his alleged

friends, named upon pages 8 and 9 of said cross-bill, the plan that had been agreed upon by said alleged original promoters, or any plan, or whether said parties appointed said Philo D. Beard their agent, as in said cross-bill of complaint alleged.

These defendants, further answering, say that they do not know whether the said law firm of Dupee, Judah, Willard & Wolf, at or about the same time, or at any time, acting for themselves and as the agent of certain of their friends in Chicago, together with the said Stein, agreed to purchase for themselves and as such agent 77 bonds of said Columbia Straw Paper Company, for the sum of \$77,000, upon receiving a gratuity of 1,493 full-paid shares of preferred stock and 5,211 full-paid shares of common stock of the said company so to be organized.

240 These defendants, further answering, say that they do not know whether said John B. Halladay at the same time agreed to purchase for himself bonds of said company as in said cross-bill alleged, nor do they know whether said Fred C. Trebein at the same time agreed to purchase for himself bonds as in said cross-bill of complaint alleged.

These defendants, further answering, upon information and belief, deny that after the arrangements alleged in said cross-bill for procuring the bonds and gratuitous stock of said Columbia Straw Paper Company, or at any time, all or any of the said parties named in said cross-bill paid the respective sums of money in cross-bill mentioned, or any sum, into the hands of the said Henry M. Wolf as trustee, for the purpose of applying the same at the proper time to the purchase of said mills.

These defendants, further answering, on information and belief deny that the giving of stock of said Columbia Straw Paper Company with said bonds was kept a secret from said cross-complainants or from any owners of mills who had agreed under their options to sell such mills to said Beard and Ramsdell.

These defendants, further answering, on information and belief admit that said Beard and Ramsdell assigned, transferred and set over all their interest in and to options for the purchase of such mills to said Emanuel Stein, but upon what consideration these defendants do not know, but these defendants deny that such transfer was made for the purpose of evading the provisions of the statutes of New Jersey concerning corporations, as in said cross-bill alleged. These defendants are informed and believe that said Stein accepted in writing said options some time during the fall of 1892. They admit that said firm of Dupee, Judah, Willard & Wolf examined the titles to said properties and gave written opinions thereon; that said firm of Guggenheimer & Untermyer, of which firm these defendants were members, prepared articles of incorporation for the formation of the Columbia Straw Paper Company; that said articles of incorporation were duly executed as alleged in said cross-bill, and filed in the office of the secretary of the State of New Jersey as in said cross-bill alleged.

These defendants, further answering, deny that immediately upon the filing of said articles of incorporation the stockholders of said

company elected as directors of said company the said Philo D. Beard, Fred C. Trebein, E. Gilbert Church, J. B. Halladay, B. M. Frees, Richard T. Higgins, Emanuel Stein, Augustus P. Brown and William C. Heppenheimer, and these defendants allege that

241 none of the parties above named were then elected as such directors except said Philo D. Beard and said William C. Heppenheimer; and these defendants deny that thereupon said board of directors met in the office of Guggenheimer & Untermyer, as alleged, and appointed attorneys for said company as in said bill alleged.

These defendants, further answering, admit that said Emanuel Stein, on or about the 14th day of December, 1892, made a written proposition to said board of directors to sell and transfer to said company the properties described in the original bill of foreclosure upon the terms of said cross-bill named, and these defendants deny that said Emanuel Stein was at that time one of the directors of said company, or that he in any way acted for these defendants, or any or either of them.

These defendants, further answering, upon information and belief deny that at time of the offer made by the said Stein, each and everyone of the directors and the principals and agents, or that any of them, knew that the par value of the shares of stock asked for by said Stein as purchase-money exceeded in amount the value of the property in exchange for which said Stein asked that it should be issued, and they deny that each and every of the said directors, principals and agents as alleged in said cross-bill had full knowledge of the real value of said property offered by said Stein, or that they disregarded their duty as directors of the defendant company, with an intent to defraud any of the defendants who filed the cross-bill or the mill-owners who were about to become stockholders under said options, or anybody else, or that they in any way disregarded their duty; and they deny that without knowledge of the said defendants filing the cross-bill, or any of the mill-owners about to become stockholders by virtue of the provisions of said options, they deliberately or fraudulently, or in any way, overvalued the said property in the sum of \$2,113,000, and purchased the same from said Stein in the manner and upon the terms proposed by him as alleged in said cross-bill.

These defendants, further answering, deny that at the time of the purchase of said paper mill plants from said Stein by said Columbia Straw Paper Company, the said board of directors or any of the persons referred to as principals or agents in said cross-bill, or any or either of them, had full or any knowledge of the original or any agreement for the taking of options from said mill-owners, and they deny that they or either of them had any knowledge that said assignment from said Beard and Ramsdell to said Stein was without consideration, or was intended as a means to evade the provisions of the statutes of New Jersey; and they deny that any

242 plan was agreed upon in regard thereto between these defendants, or either of them, with any of the parties named in said cross-bill of complaint, as in said cross-bill alleged.

These defendants further answering, upon information and belief deny that the money necessary for the cash purchase of said paper mill plants and for the running capital of the corporation to be formed, or any of it, was placed in the hands of said Henry M. Wolf, as trustee.

These defendants, further answering, deny that said Stein accepted said options at the instance or upon the request of these defendants or either of them. They allege, however, that said Stein submitted a proposition for the sale of said property to the board of directors, which proposition the board accepted; and they deny that they or either of them knew that any of said directors were elected for the purpose of effecting and accepting said proposition of said Stein for the sale of said paper mill plants.

And they deny that they or either of them had any knowledge that the terms of or that anything connected with said purchase was to be kept secret from any of the owners of said mill plants or that any matter connected with the whole transaction was to be kept secret from anybody.

These defendants, further answering, say that they have no knowledge other than is shown by the records of said company as to any purchase by said board of bonds and stocks of said Columbia Straw Paper Company, and these defendants have no knowledge as to any purchase of such bonds and stocks by said alleged confederates of said Beard, nor do they know whether the said Beard and his confederates now hold, or as to whether at the time of the filing of the original bill herein, they held such bonds or stock, but these defendants upon information and belief deny that it is claimed by the Northern Trust Company and Ovid B. Jameson, trustees in the original bill of foreclosure that there is due to the said Beard and his said confederates as holders and owners of bonds of said company the sum of \$238,000, or any other sum.

These defendants, further answering, say that they have no knowledge as to said alleged indebtedness of said Beard and his alleged confederates to said Columbia Straw Paper Company, and they say that they have no knowledge, and they deny on information and belief that any property or assets of any kind were illegally or fraudulently withdrawn from the treasury of the Columbia Straw Paper Company by said parties.

243 These defendants, further answering, say upon information and belief, that said law firm of Guggenheimer & Untermeyer for themselves and as agents for their alleged confederates did not receive, in pursuance of the agreement alleged in the cross-bill, 483 of the said bonds sought to be foreclosed in this cause, and that the defendants did not receive as a gratuity, without any consideration therefor, 1,269 full-paid shares of preferred stock and 5,198 full-paid shares of common stock of said company in the manner and form alleged in said cross-bill; and they deny, upon information and belief, that the said Guggenheimer & Untermeyer and their said confederates are still the owners and holders of said bonds and stock or were such owners and holders at the time of the beginning of this proceeding to foreclose. But these defendants

admit that the individual members of said firm own some of the bonds and some of the stock, preferred and common, of the Columbia Straw Paper Company, but they deny that it is claimed by the Northern Trust Company and Ovid B. Jameson, as trustees, in the original bill of foreclosure that there is due to the said Beard and his said confederates, as holders and owners of the bonds of said company, the sum of \$238,000 or any other sum.

These defendants, further answering, upon information and belief deny that it is claimed by the Northern Trust Company and Ovid B. Jameson, trustees, in the original bill of foreclosure that there is due to said Guggenheimer & Untermeyer and their said principals and confederates, as owners and holders of said bonds aforesaid, the sum of 483,000; and they deny that the said Guggenheimer & Untermeyer and their alleged confederates now owe or are indebted to or hold as trustees for the said Columbia Straw Paper Company or in any capacity whatever the sum of \$126,900 being par value of the shares of preferred stock, and \$519,800, the par value of the shares of common stock, or for any other sum of money whatsoever. And they deny that any stock, preferred or common, or any property or assets of any kind or nature whatsoever were illegally or fraudulently withdrawn by the said firm of Guggenheimer & Untermeyer or by these defendants from the treasury of the said defendant, The Columbia Straw Paper Company, without payment therefor, either in money or property or in any other way, or in violation of the statutes of the State of New Jersey or of any other State or government.

These defendants, further answering, deny upon information and belief that the said Stein and the said law firm of Dupee, Judah, Willard & Wolf, for themselves or as agents for any one, received from said Stein, in pursuance of said agreement 77 of said 244 bonds sought to be foreclosed in this case; and they deny that they received as a gratuity without any consideration therefor, 1,493 full-paid shares of preferred stock, and 5,211 full-paid shares of common stock of said company in the manner and form alleged in said cross-bill of complaint. And upon information and belief they deny that the said Stein and the said Dupee, Judah, Willard & Wolf and their alleged confederates are still the owners and holders of said bonds and stock, or were such owners and holders at the time of the beginning of this foreclosure proceeding; and upon information and belief they deny that it is claimed by the Northern Trust Company and Ovid B. Jameson, as trustees, in the original bill of foreclosure herein, that there is due to the said Stein and the said Dupee, Judah, Willard & Wolf and their confederates, as owners and holders of said bonds aforesaid, the sum of \$77,000 or any other sum; and these defendants say that they have no knowledge as to whether the said Stein and the said Dupee, Judah, Willard & Wolf or any of them, or any of their alleged confederates, now owe or are indebted to or hold as trustees for the said Columbia Straw Paper Company the sum of \$149,300 or \$521,100 or any other sum; and upon information and belief they deny that the said Dupee, Judah, Willard & Wolf or any or either of them

have illegally or fraudulently or otherwise withdrawn any stock or bonds or money or property or anything else from the treasury of the said Columbia Straw Paper Company.

These defendants, further answering say, upon information and belief that the said Philo D. Beard, as president of the Columbia Straw Paper Company, on or about the 17th day of May, 1893, caused to be filed with the secretary of state a certificate verified by him, under oath, as alleged in the said cross-bill, and these defendants in like manner aver that in point of fact the stock of said company has been fully paid for in money or property as required by the statutes of the State of New Jersey.

These defendants, further answering, deny that the persons named on page 19 of said cross-bill held a controlling interest in the said company, in December, 1892, at the time of the election of the first board of directors, and they say that they do not know whether the persons named on page 19 of the cross-bill held a controlling interest on said company at any of the other times alleged in said cross-bill, and that they have no knowledge that at the time of the filing of the original bill herein, the board of directors of the Columbia Straw Paper Company was acting in a manner destructive to the corporation and for and on behalf of their own interests.

245 These defendants, further answering, upon information and belief deny that the execution of said mortgage by the Columbia Straw Paper Company as alleged in paragraph 111 of the bill of complaint herein, was fraudulent or in violation of the rights of the stockholders or any of them of the Columbia Straw Paper Company; and upon information and belief they deny that said mortgage and the bonds issued thereunder were without consideration to the said defendant company or of no benefit thereto.

These defendants, further answering, upon information and belief, deny that any of the provisions of said mortgage or deed of trust of said Columbia Straw Paper Company were corrupt, usurious, unlawful or void.

These defendants, further answering, deny that said Philo D. Beard, as president of said company, and said board of directors acting under and pursuant to the advice of the said Dupee, Judah, Willard & Wolf and their associates, Guggenheimer & Untermeyer, attorneys of said company, neglected and refused to pay and discharge six interest coupons on the bonds of James Flanagan, a resident of the city of New York, in order that suit might be instituted thereon; and these said defendants say that at said time neither the said firm of Dupee, Judah, Willard & Wolf, nor the said firm of Guggenheimer & Untermeyer were the attorneys of the said Columbia Straw Paper Company, nor were they at that time associated together; and upon information and belief these defendants, further answering, allege that the said firm of Guggenheimer & Untermeyer did not combine or confederate with the said Beard, as president, and said directors, and they deny any knowledge as to whether the said firm of Dupee, Judah, Willard & Wolf caused said Flanagan, a resident of the city and State of New York, to institute an action at law in the office of one George W. Underwood, a justice of the

peace, in the manner and form alleged in said cross-bill, or as alleged in the said cross-bill.

These defendants, further answering, allege upon information and belief that on January 22, 1895, said Columbia Straw Paper Company was without funds to discharge the coupons due on its bonds on the 1st day of June and 1st day of December previous thereto, amounting, exclusive of interest thereon, to \$60,000, and was without resources with which to pay taxes, insurance, labor, materials, supplies, water power, rent and the other approved and long past-due indebtedness of the said company, and by reason thereof the fore-

closure of said mortgage became unavoidable, and that abundant legal reasons existed for and justified said foreclosure, wholly independent of the entry of the judgment procured by said Flanagan.

These defendants, further answering, deny that the said firm of Dupee, Judah, Willard & Wolf, on behalf of the trustees under said mortgage, filed in this court a printed bill of complaint prepared by the firm of Guggenheimer & Untermeyer, in the city of New York; and allege upon information and belief that the said bill of complaint herein was prepared by the defendants, Dupee, Judah, Willard & Wolf, in the city of Chicago, and that neither the said complaint nor any copy thereof was ever seen by the said firm of Guggenheimer & Untermeyer until some days after the said bill was filed in this court; and these defendants allege that they never saw a copy of said bill until some time after the same was filed in this court.

These defendants, further answering, deny that the transaction complained of in paragraph VI of the cross-bill herein was a fraudulent or collusive act of the acting members and attorneys of the said Columbia Straw Paper Company, with themselves as bondholders, in order to give their representatives, the trustees herein, the right to begin this foreclosure proceeding.

These defendants, further answering, say that they have no knowledge that said Philo D. Beard, as president of the said Columbia Straw Paper Company and a member of its board of directors, and the other persons named in clause 7 of the said cross-bill of complaint, loaned out of the treasury of the said company to the said Emanuel Stein the sum of \$114,940.31, as alleged in the said cross-bill of complaint.

These defendants, further answering, say that they have no knowledge that any of the persons or firms named in said clause 8 of the cross-bill of complaint have withdrawn from the treasury of said Columbia Straw Paper Company, without reimbursing the same, any bonds or stocks whatever; and these defendants say that neither they nor either of them have ever withdrawn anything from the treasury of the said company, nor have they combined or confederated with any one, as stated in clause 8 of the said cross-bill.

These defendants, further answering, deny that they or either of them, either by themselves or in connection with other persons, formed a corporation known as the Paper Commission Company, and they say that these defendants never had any connection with

the Paper Commission Company, except that the firm of Guggenheimer & Untermeyer, of which firm these defendants are members, acted as attorneys in incorporating said company, and from
247 time to time acted as its attorneys for the business of said company for some time during and after its organization; and these defendants deny that they or either of them at any time received anything more from said Paper Commission Company than a part of reasonable compensation for services rendered by said firm to said company; and these defendants say that they have no knowledge as to the expenses of said Paper Commission Company or said Columbia Straw Paper Company in regard to the sale of paper.

These defendants, further answering, say that they have no knowledge whether the agreement referred to in clause 10 of said cross-bill of complaint was signed by the stockholders of said Columbia Straw Paper Company; and these defendants deny that the rights and interests of said Columbia Straw Paper Company in this litigation are entirely in the hands of and under the control of said trustees or bondholders, or have been since the 22d day of March, 1895; and these defendants say that the said trustees never became parties to said agreement or acted thereunder.

These defendants, further answering, deny that they have any knowledge as to whether all the officers and directors of the defendant company are large holders of the bonds sought to be foreclosed by the original bill of complaint, or as to whether all of the officers or directors or any of them have so arranged their affairs in this regard that it will be to their greater advantage to admit, without defense, the bill of complaint herein; and they deny, upon information and belief, that by reason of the attitude of each and every of the said board, or any of the said board of directors, or by reason of any of the matters or things alleged in clause 11 of the cross-bill of complaint that it would be useless to ask or demand the directors or officers to take proper steps in this proceeding, or to set up for the defendant company all of its defense to the bill of complaint, or to secure for said corporation all of the equities to which it is entitled by reason of the matters or things alleged in the complaint.

These defendants, further answering, deny that the firm of Guggenheimer & Untermeyer, are, or at any time have been, solicitors for the said trustees, the complainants herein, either of record or otherwise, or in this action or any other matter, or that as such solicitors they, or any of them, prepared the printed bill of complaint herein for the foreclosure of the said mortgage.

These defendants further answering, deny that they combined or confederated with Dupee, Judah, Willard and Wolf, with Beard and Stein and with Solomon Marx, or with any or either of them, for any of the purposes mentioned in clause 12 of said cross-
248 bill, and they deny that George P. Jones, the receiver, heretofore appointed in this case, is receiver only of the mortgaged premises or lands in the original bill described, but they say that he is receiver of all of the assets covered by said mortgage; and these defendants deny that they caused proceedings to be

instituted in the State of New Jersey to have said defendant company declared by the chancellor of said State, under the statutes thereof, insolvent, as alleged in clause 12 of the cross-bill, but they deny any knowledge as to whether the said firm of Guggenheimer & Untermyer drew the said petition and caused it to be signed and sworn to by Solomon Marx or caused it to be filed by other appearing solicitors before said chancellor, or as to whether the said Beard and Stein, as directors of the company, admitted before the chancellor at the hearing of the said petition, the insolvency of the said company; and they deny any knowledge as to whether the said chancellor was informed, or was not informed, as to any of the matters alleged in clause 12 of the said cross-bill; and they deny that the object sought in obtaining the appointment of such receiver was to obtain possession of the books and papers of the said Columbia Straw Paper Company, in order to avoid the enforcement of any liability, or for any other reason, or for any of the purposes alleged in clause 12 of said cross-bill.

These defendants, further answering, deny upon information and belief, that the said receiver herein has acted under the direction of the said firm of Herrick, Allen & Boyesen, attorneys in this proceeding for the said Columbia Straw Paper Company; and they deny that he has been subject to the instruction of the board of directors of the said company or any of the trustees herein.

These defendants admit that the said receiver has no actual or practical knowledge of the manufacture of paper, and they aver that such knowledge is in no way necessary, and these defendants aver that the said receiver has taken actual possession of the property included in the said mortgage, and has acted under the direction of the court in regard thereto.

Further answering the said cross-bill of complaint, these answering defendants allege that on or about the 14th day of December, 1892, they were stockholders of the said Columbia Straw Paper Company and members of the board of directors, which was composed of the following members:

William C. Heppenheimer, Philo D. Beard, William C. Taylor, Maurice Untermyer, Moses Weinman, Samuel H. Guggenheimer, Theodore L. Herrmann, Jay C. Guggenheimer and Harry C. Mannheim.

That on or about the said date, Emanuel Stein, mentioned in the cross-bill, submitted to said board of directors a proposition by which he offered to sell unto the company various mills and properties manufacturing straw paper, together with the good will of the businesses connected with the various plants, for the sum of \$5,000,000, to be paid for partly in cash, partly in bonds of the company and partly in common and preferred stock.

That the said board of directors, of which board these defendants were members, believing at the time that the property offered to said board by the said Stein, was fully worth the amount which he asked therefor, accepted the proposition of said Stein, and in good faith and believing that the properties acquired by the company were fully worth the amount of the purchase price thereof, paid

\$1,800 in cash, \$1,000,000 in bonds, \$1,000,000 in preferred stock, and \$2,998,200 in common stock.

That the said bonds and preferred and common stock, these defendants are informed and believe, are the bonds and common and preferred stock referred to in the complaint, and that all of such bonds and stock were issued for money or for property which the company acquired and which was, as the board of directors and these defendants believed at the time, of the value of \$5,000,000.

And these defendants further answering, submit that the cross-complainants have not by their said cross-bill entitled themselves to any equitable relief against these defendants, or either of them, and these defendants accordingly claim the same benefit from this their answer, as if they had demurred to said cross-bill.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they or either of them are by said cross-bill charged, with this, that there is any other matter, cause or thing in the said cross-complainants' said cross-bill of complaint contained material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain and prove as this honorable court shall direct, and humbly
250 pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

MAURICE UNTERMYER,
MOSES WEINMAN,
By DUPEE, JUDAH, WILLARD & WOLF,
Their Attorneys.

DUPEE, JUDAH, WILLARD & WOLF,
Solrs and of Counsel for Def'ts.

CITY AND COUNTY OF NEW YORK, ss :

On this 31st day of July, one thousand eight hundred and ninety-five, before me personally appeared Maurice Untermyer and Moses Weinman, who each of them made solemn oath that he had seen the foregoing answer and knew the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and that as to those matters he believes the same to be true.

MAURICE UNTERMYER.
MOSES WEINMAN.

Sworn to before me this 31st day of July, 1895.

[SEAL.]

B. BENJ. SCHIFF,
Notary Public, Kings County.

Certificate filed in New York county.

(Endorsed :) Filed August 20, 1895. S. W. Burnham, clerk.

251 Afterwards, to wit: on the third day of September, 1895, came Thomas T. Ramsdell by his solicitors and filed in the clerk's office of said court his answer to the cross-bill of Harry W. Dickerman, trustee, *et al.*, which said answer is in the words and figures following, to wit:

Answer of T. T. Ramsdell to Cross bill.

Answer of Thomas T. Ramsdell to cross-bill of Harry W. Dickerman, trustee, *et al.*

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ss :

In the Circuit Court of the United States.

THE NORTHERN TRUST COMPANY and OVID B. JAMESON, as Trustees, Complainants, } Original Bill.
vs. 23614-832.

COLUMBIA STRAW PAPER COMPANY, Defendant. }

HARRY W. DICKERMAN, as Trustee of the Second National Bank of Rockford, Illinois, *et al.*, Cross-complainants, }

vs.

THE NORTHERN TRUST COMPANY, OVID B. JAMESON, Columbia Straw Paper Company, Philo D. Beard, Thomas T. Ramsdell, *et al.*, Cross-defendants. }

The separate answer of Thomas T. Ramsdell to said cross-bill.

This defendant, saving and reserving to himself all benefit of exception to the manifold errors and insufficiencies of said cross-bill, for answer thereto, or to so much thereof as he is advised it is material he should make answer unto, says:

First. This defendant has no information or belief concerning the allegation of said cross-bill in paragraph first thereof, and concerning ownership and holding of shares of the preferred and common stock of said Columbia Straw Paper Company by
252 the parties therein named as complainants in this cause, and has no knowledge or information whether they or any of them are holders respectively of the shares mentioned and set forth in said paragraph first of said cross-bill, or any part or parcel thereof, or whether said complainants participated in any acts in said paragraph mentioned, or are transferees with knowledge of the stockholders who participated therein, or have acquiesced in any of said acts, and therefore he denies each and every allegation of said paragraph; and on the contrary, it is the belief of this defendant, and he avers the fact to be, that the said cross-complainants and each of them were at the time of the said acts fully cognizant thereof and participated therein.

Second. The said defendant admits the filing of the original bill of complaint as set forth in paragraph two.

Third. The said defendant denies each and every allegation of the third paragraph of said cross-bill, in manner and form as therein set forth, except as herein specially admitted, and for answer thereto says: That as this defendant is informed and believes at some prior time to the summer of 1892, certain parties, among whom were Emanuel Stein of Chicago, Philo D. Beard, of Buffalo, and Messrs. Guggenheimer and Untermeyer and others, composing the law firm of Guggenheimer & Untermeyer, doing business in the city of New York, and various other parties associated with them, were engaged in an enterprise to secure capital and form a corporation and for the acquisition of such mills as were engaged in the manufacture of straw paper at various points in the States of Illinois, Indiana and Ohio, and elsewhere in the United States, and that some options had been obtained, as this defendant is informed and believes, by certain parties for purchasing certain of such mill properties, and that a great deal of time and labor had been expended unsuccessfully in attempting to bring about the formation of the corporation desired; but that this defendant had no interest and no part or lot in said enterprise with said parties, or any of them directly or indirectly, until about the date and in the manner hereinafter set forth. That the parties so interested as aforesaid, in the early part of the year 1892, brought the matter to the attention of this defendant who consulted to some extent with Philo D. Beard, Emanuel Stein and Samuel Untermeyer, all of whom are defendants in this action, and so far approved of the project and enterprise which was then on foot that he finally consented to become interested in the organization when the plans were sufficiently perfected so that an organized company could be formed. That at such date the Columbia Straw Paper Company, mentioned in the bill of complaint and cross-bill herein, had not been organized, nor

253 had anything whatever been done except in the way of preliminary consultation and obtaining of figures and data upon which to base a proposition to form some organization for controlling the manufacture and sale of straw paper in the United States, similar to that which was afterwards formed under the name of the said Columbia Straw Paper Company. And the said defendant admits that in that connection he did allow his name, with that of said Beard, to be used as the parties to whom option contracts should run for the purchase of mills as a basis for the future formation of such a corporation. But this defendant alleges that he had no part whatsoever, took no steps, and had nothing to do with the procuring of any of said options, and furnished and paid no money for any expenses concerning the same, but simply allowed the use of his name as a matter of convenience only, it being always understood and agreed by this defendant that when the said company or corporation was organized that the said options should be at once turned over to the corporation itself. And this defendant specifically denies that he ever entered into the agreement set forth in paragraph three of said cross-bill, or any other agreement, except as hereinbefore set forth, relative to said options or executory contracts for the purchase of paper mill plants. And this defendant further says that he has

no knowledge as to how many of such options were obtained as aforesaid, but that, as he verily believes, it was understood and expected to secure control of somewhere about forty-five mills, and that the corporation should be capitalized at something like three millions of common and one million of preferred stock to be issued at par; but as to whether said stock and notes, and said bonds were to be issued in manner and form set forth in paragraph three of said cross bill, for the purpose of payment of said mills as therein mentioned, this defendant has no knowledge or information, and therefore denies the same.

And this defendant further answering said cross-bill, says that he has no knowledge or information as to the amount of the purchase price in the options aforesaid for 39 mills, as set forth in said paragraph three of said cross-bill, and that, except by the use of his name, he had nothing whatsoever to do with the obtaining, procuring or handling the said options or any of them, and paid nothing for or on account of any of them. And this defendant denies that he ever met with any of said parties (except as hereinafter stated) and consulted or decided concerning the amount to be provided to purchase the property and furnish the running capital of a corporation to be organized as mentioned and set forth in said cross-bill, in said paragraph three and therefore he denies all the allegations in that

254 behalf in said cross-bill contained. But alleges that he did attend in the city of New York in consultation with the said Guggenheimer and Untermeyer and with Philo D. Beard and with said Emanuel Stein, all of whom are defendants herein, in the month of August, 1892, for consultation concerning the proper mode of organizing the said corporation, which was afterwards organized and called the Columbia Straw Paper Company, and that at that time, this defendant, having no pecuniary interest in said enterprise, and having invested nothing therein, and not being satisfied with the outlook and the business prospects involved in the formation of such a corporation and the undertaking to control the straw-paper business of the country, formally withdrew from all connection with the enterprise that has been set on foot as aforesaid, and gave notice to the other party named in said options that he would not contribute any money or services or be in anywise bound or responsible in the said matter, and that he would not associate himself or become a party to the formation of said corporation, directly or indirectly, and then and there notified the said parties and each of them that although his name appeared as a party in the said option contracts, that he, without any compensation for his services or time or for the use of his name, and without any profit in the transaction, would assign and transfer immediately to any person designated by the parties aforesaid any and all interest which he had or could be construed to have in the said option contracts or any of them. That thereupon he, this defendant, retired entirely from all connection with the formation of said corporation or the putting forth of the business in the complaint alleged, and from that time had no more connection with the enterprise in any manner whatsoever, except to sign and deliver to the defendant Emanuel Stein, on October 14,

1892, upon request, a transfer of the options which had originally been taken in the name of this defendant with said Beard. And this defendant avers and alleges that on such transfer no money or other consideration of any kind whatsoever was paid or given to him or for his benefit. That, as he was informed and believes, thereafter and on the 6th day of December, 1892, a corporation, in which this defendant had not a single dollar of interest, directly or indirectly, was organized to carry out the plan and enterprise hereinbefore mentioned which was called the Columbia Straw Paper Company, and in which many of the parties named in the original bill of complaint and in the cross-bill were stockholders, trustees, officers and directors. That as to the allegations of said cross-bill concerning the detail of that business, or formation of said corporation, the placing or marketing or disposing of its securities, or of what was done or omitted by any of the parties named in the said cross-bill in forming said corporation, or to further its ends, or to put forward
255 and carry on its business, this defendant has no knowledge and no information sufficient to form a belief, and therefore leave the complainant to make such proof thereof as he may be advised.

And as to each and every other allegation in the said cross-bill contained, concerning the conduct of the business or affairs of the said Columbia Straw Paper Company, or the Paper Commission Company, or the officers, agents and attorneys thereof, or of the doings of the board of directors, or the handling or care or management of the business of said corporations, this defendant denies that he has any knowledge or information sufficient to form a belief, and therefore leaves the complainant to such proof thereof as he may be advised. But this defendant denies each and every allegation of said bill of complaint charging him, this defendant, directly or indirectly, with any connection or association with any of the corporations above named; and alleges, as hereinbefore set forth, that he never had any interest in or connection with the said corporations, or any of them, or any ownership in any of the properties mentioned and described in the bill of complaint aforesaid. And this defendant denies that he ever at any time had any ownership in, or control of any stock or bonds of the said Columbia Straw Paper Company, or Paper Commission Company, or any other enterprise mentioned and set forth in the bill of complaint, either directly or indirectly, but on the contrary avers that he had no interest therein at any time.

Fourth. And further answering said cross-bill, this defendant admits that he did on or about October 14, 1892, transfer and assign his interest in the said options to Emanuel Stein, without any consideration moving to him, as already set forth in this answer; but denies that he made such transfer for the purpose of evading the laws of New Jersey, or any other State. And this defendant alleges that in executing and delivering said assignment of said option, he was only carrying out and perfecting his complete withdrawal from all association with the enterprise, as hereinbefore referred to, and in fulfillment of his promise made at the time of

his withdrawal from said enterprise, to transfer said option to said Philo D. Beard, or the other parties with whom he was originally associated as hereinbefore set forth. And this defendant most emphatically denies that in making such transfer he became or was a party to any scheme or device on the part of any person or persons to secure to themselves or make away with the stock or other securities of said company in any form whatsoever.

Fifth. And further answering said complaint, this defendant states that the matters and things set up in said cross-bill have
256 been for more than two years last past, fully known and acquiesced in by the said cross-complainants, and that they ought not now to be heard in complaint thereof; and further denies that they are entitled to any of the relief in said cross-bill sought, or are entitled to recover anything of from or against this defendant.

Sixth. And for the reasons aforesaid, and for other reasons appearing on the face of said cross-bill, this defendant doth demur to the said cross-bill, and for cause of demurrer sheweth that the said cross-complainants have not made or stated such a case as entitles them in a court of equity to the relief prayed for, or any part thereof, and he prays the same benefit of said demurrer as though demurrer had been filed specifically assigning the said causes prior to the filing of this answer.

Seventh. And this defendant denies all and every manner of unlawful combination and confederacy wherewith he is by said bill charged; and he denies any and all allegations of said cross-bill, charging him with any unlawful combination, confederacy, or act in any manner or form whatsoever, directly or by implication; and hereby denies any and every other matter, cause or thing in said cross-bill contained which is material or necessary for this defendant to make answer unto in support of his defense to this action. All of which matters and things this defendant is ready and willing to aver and prove as this honorable court shall direct.

And he prays to be hence dismissed with the costs in this behalf most wrongfully sustained.

THOS. T. RAMSDELL.

BISSELL, SICARD, BISSELL & CAREY,

Solicitors and of Counsel.

ULLMAN & HACKER, *Of Counsel.*

STATE OF NEW YORK, }
County of Erie, } ss:

Thomas T. Ramsdell, being duly sworn, deposes and says, that the matters and things set forth in the foregoing answer, by him subscribed, are true, except those matters stated on information and belief, and as to those he believes it to be true.

THOS. T. RAMSDELL.

Subscribed and sworn to before me this 31st day of August, 1895.

WM. BRUNT WRIGHT, JR.,

[SEAL.]

Notary Public.

(Endorsed :) Filed Sept. 3, 1895. S. W. Burnham, clerk.

257 Afterwards, to wit: on the fifth day of September, 1895, came Harry W. Dickerman, trustee, *et al.*, by their solicitors, and filed in the clerk's office of said court their replication to the answer of Samuel Untermeyer, which said replication is in the words and figures following, to wit:

Replication to the Answer of Samuel Untermeyer.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ss :

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and OVID B. Jameson, Trustees, Complainants,	} Bill. In Equity. 23614-832.
vs. THE COLUMBIA STRAW PAPER COMPANY, De- fendant.	

HARRY W. DICKERMAN ET AL., Complainants,	} Cross-bill.
vs. PHILO D. BEARD ET AL., Defendants.	

The replication of the cross-complainants, Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois; Buckstaff Brothers Manufacturing Company, Henry S. Carroll, for himself and the Clarksville Paper Company; F. J. Diem, Freeman Graham, Jr., Julius Graham, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, to the separate answer of Samuel Untermeyer, defendant to the cross-bill filed herein.

These repliants, saving and reserving to themselves all, and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, say that they will aver and prove their said cross-bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are, and will be, ready to aver and prove, as this honorable court shall direct; and humbly pray, as in and by their said cross-bill they have already prayed.

BLUFORD WILSON AND
OTTO GRESHAM,
Solicitors for Cross-complainants.

(Endorsed :) Filed Sept. 5, 1895. S. W. Burnham, clerk.

On the same day, to wit: the fifth day of September, 1895, came Harry W. Dickerman, trustee, *et al.*, by their solicitors, and filed in the clerk's office of said court their replication to the answer of Maurice Untermeyer and Moses Weiman, to the cross-bill of complaint, which said replication is in the words and figures following, to wit:

Replication to Answer of Maurice Untermeyer et al.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ss:

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and OVID B. Jameson, Trustee-, Complainants,	} Bill. In Equity. 23614-832.
vs.	
THE COLUMBIA STRAW PAPER COMPANY, Defendant.	

HARRY W. DICKERMAN ET AL., Complainants,	} Cross-bill.
vs.	
PHILO D. BEARD ET AL., Defendants.	

The replication of the cross-complainants, Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois; 259 Buckstaff Brothers Manufacturing Company, Henry S. Carroll, for himself and the Clarksville Paper Company; F. J. Diem, Freeman Graham, Jr., Julius Graham, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, to the joint and several answers of Maurice Untermeyer and Moses Weiman, defendants to the cross-bill filed herein.

These repliants, saving and reserving to themselves all, and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto say, that they will aver and prove their said cross-bill to be true, certain and sufficient in the law to be answered unto; and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other — or thing whatsoever in the said answers contained, material or *matter* effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are, and will be, ready to aver and prove, as this honorable court shall direct; and humbly pray, as in and by their said cross-bill they have already prayed.

BLUFORD WILSON AND
OTTO GRESHAM,
Solicitors for Cross-complainants.

(Endorsed:) Filed September 5, 1895. S. W. Burnham, clerk.

260 On the same day, to wit, the 5th day of September, 1895, came Harry W. Dickermann, trustee, *et al.*, by their solicitors, and filed in the clerk's office of said court their replication to the answer of Randolph Guggenheimer and Isaac Untermeyer to the cross-bill of complaint, which said replication is in the words and figures following, to wit:

Replication to Answer of Randolph Guggenheimer et al.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ss:

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and OVID B. Jameson, Trustees, Complainants,	} Bill. In Equity. 23614-832.
<i>vs.</i>	
THE COLUMBIA STRAW PAPER COMPANY, Defendants.	} Cross-bill.
<i>vs.</i>	

HARRY W. DICKERMAN ET AL., Complainants,	} Cross-bill.
<i>vs.</i>	
PHILO D. BEARD ET AL., Defendants.	

The replication of the cross-complainants, Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois; Buckstaff Brothers Manufacturing Company, Henry S. Carroll, for himself and the Clarksville Paper Company; F. J. Diem, Freeman Graham, Jr., Julius Graham, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, to the joint and several answers of Randolph Guggenheimer and Isaac Untermeyer, defendants to the cross-bill filed herein.

261 These repliants, saving and reserving to themselves all, and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto, say, that they will aver and prove their said cross-bill to be true, certain and sufficient in the law to be answered unto; and that the said answers of the said defendants are uncertain, untrue and insufficient to be replied unto by these repliants; without this, that, any other matter or thing whatsoever in the said answers contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied is true; all which matters and things these repliants are, and will be, ready to aver and prove, as this honorable court shall direct; and humbly pray, as in and by their said cross-bill they have already prayed.

BLUFORD WILSON AND
OTTO GRESHAM,
Solicitors for Cross-complainants.

(Endorsed :) Filed September 5, 1895. S. W. Burnham, clerk.

262 Afterwards, to wit: on the sixteenth day of September, 1895, came Harry W. Dickerman, trustee, *et al.*, by their solicitors, and filed in the clerk's office of said court their replication to the answer of Thomas T. Ramsdell, which said replication is in the words and figures following, to wit:

Replication to Answer of Thomas T. Ramsdell.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ^{ss.}:

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and OVID B. Jameson, Trustees, Complainants,	} Bill. In Equity. 23614-S32.
<i>vs.</i> THE COLUMBIA STRAW PAPER COMPANY, De- fendant.	
HARRY W. DICKERMAN ET AL., Complainants,	} Cross-bill.
<i>vs.</i> PHILO D. BEARD ET AL., Defendants.	

The replication of the cross-complainants. Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois; Buckstaff Brothers Manufacturing Company, Harry S. Carroll, for himself and the Clarksville Paper Company; F. J. Diem, Freeman Graham, Jr., Julius Graham, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, to the separate answer of Thomas Ramsdell, defendant to the cross-bill filed therein.

263 These repliants, saving and reserving to themselves all, and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto say, that they will aver and prove their said cross-bill to be true, certain, and sufficient in the law to be answered thereunto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by these repliants; without this, that, any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are, and will be, ready to aver and prove, as this honorable court shall direct; and humbly pray, as in and by their said cross-bill they have already prayed.

OTTO GRESHAM,
BLUFORD WILSON,
Solicitors for Cross-complainants.

(Endorsed :) Filed Sept. 16, 1895. S. W. Burnham, clerk.

Afterwards, to wit, on the tenth day of October, in the July term of said court, 1895, in the record of proceedings thereof in said entitled cause before the Hon. John W. Showalter, circuit judge, appears the following entry, to wit:

Order of Reference.

Entry.

THE NORTHERN TRUST COMPANY and OVID B. JAMESON	} In Chancery. 23614.
vs. THE COLUMBIA STRAW PAPER COMPANY.	

Now come the complainants, by Dupee, Judah, Willard and Wolf, their solicitors, and upon motion of said complainants, this cause is hereby referred upon the issues made up on the original cause to Henry W. Bishop, one of the masters in chancery of this court, and the master is hereby directed to take testimony and report the same to this court with his conclusions thereon, with all convenient speed. And it is further ordered that the complainants have twenty days within which to take their testimony-in-chief, the defendants are allowed thirty days thereafter within which to take their testimony, and the complainants are allowed thirty days thereafter within which to take their testimony in rebuttal.

264 Afterwards, to wit, on the 27th day of November, 1895, came Philo D. Beard, by his solicitors, and filed in the clerk's office of said court his demurrer to the cross-bill of Harry W. Dickerman, trustee, *et al.*, which said demurrer is in words and figures following, to wit:

Demurrer of Philo D. Beard to Cross-bill.

UNITED STATES OF AMERICA, Northern District of Illinois, Northern Division,	} ss:

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and OVID B. JAMESON, as Trustees, Complainants,	} Original Bill.
vs. COLUMBIA STRAW PAPER COMPANY, Defendant.	

HARRY W. DICKERMAN, as Trustee of the Second National Bank of Rockford, Illinois, <i>et al.</i> , Cross-complainants,	} Cross-bill.
vs. THE NORTHERN TRUST COMPANY, OVID B. JAMESON, Columbia Straw Paper Company, Philo D. Beard, <i>et al.</i> , Cross-defendants.	

The separate answer of Philo D. Beard to said cross-bill.

Philo D. Beard, saving and reserving to himself all benefit of exception to the errors, insufficiencies of said cross-bill, for answer

thereto, prays leave to adopt, and he does hereby, as his answer thereto the answer of Emanuel Stein to said cross-bill filed herein on the sixth day of July, 1895.

And this defendant doth demur to said cross-bill, and for cause of demurrer says:

265 1. That said cross-complainants have not in or by their said cross-bill, made any title to the relief thereby prayed or any part thereof, or to any other similar relief.

2. That said cross-complainants have not in or by said cross-bill, made or stated such a case as entitles them or any of them to any such discovery or relief as is thereby sought from or against this defendant.

3. That it appears by the said cross-bill that the same is exhibited by the said cross-complainants against this defendant and the other defendants thereto for several distinct and independent matters and causes which have no relation to each other, in several whereof this defendant is in no manner interested or concerned, and that the said cross-bill is altogether multifarious.

4. That in other respects and for other reasons and causes said cross-bill is informal, uncertain and insufficient.

And this defendant prays that he may have the same benefit and advantage of said demurrer and said several causes of demurrer as though the same had been specially interposed by way of demurrer prior to his filing this answer.

And defendant prays to be hence dismissed with his costs.

HERRICK, ALLEN & BOYESEN,

Sol'rs for Philo D. Beard.

(Endorsed :) Filed November 27, 1895. S. W. Burnham, clerk.

266 Afterwards, to wit, on the twenty-ninth day of November in the July term of said court, 1895, in the record of proceedings thereof in said entitled cause before the Hon. John W. Showalter, circuit judge, appears the following entry, to wit:

Order Extending Time.

Entry.

THE NORTHERN TRUST COMPANY	} In Chancery. 23614.
<i>vs.</i>	
COLUMBIA STRAW PAPER COMPANY.)	

Now come the parties by their solicitors. On motion of cross-defendant it is ordered that the time for him to take proofs be and the same is extended twenty days.

On the same day, to wit, the twenty-ninth day of November, 1895, in the July term of said court in the record of proceedings thereof in said entitled cause before the Hon. John W. Showalter, circuit judge, appears the following entry, to wit:

Stipulation.

Entry.

THE NORTHERN TRUST COMPANY }
vs. } In Chancery. 23614.
 COLUMBIA STRAW PAPER COMPANY. }

On stipulation filed, it — ordered by the court that the name of Buckstaff Brothers Manufacturing Company as a cross-complainant be stricken from cross-bill.

267 *Complainant's Testimony.*

UNITED STATES OF AMERICA. }
 Northern District of Illinois, Northern Division, } ss:

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and }
 Ovid B. Jameson, as Trustees, Com- }
 plainants, } Bill to Foreclose Mortgage.
vs. } No. 23614.
 COLUMBIA STRAW PAPER COMPANY, }
 Defendant. }

THURSDAY, 10 A. M., October 24th, 1895.

Testimony taken before Henry W. Bishop, master in chancery of said court, at his office, room 102 Hartford building, Chicago, Cook county, Illinois, pursuant to notice.

Since the original bill was filed Harry W. Dickerman, as trustee of the Second National Bank of Rockford, Illinois, *et al.*, have by consent of court been made parties defendant to the original bill and have filed their answer to it.

The Columbia Straw Paper Company is represented by Messrs. Herrick, Allen and Boyeson.

Harry W. Dickerman, as trustee, etc., *et al.*, by Otto Gresham.
 The complainants are represented by Dupee, Judah, Willard and Wolf.

Present: Mr. Dupee, representing the complainants.

Alonzo C. Brooks, on behalf of Herrick, Allen and Boyeson, representing the defendant, The Columbia Straw Paper Company.

Mr. Otto Gresham, representing Dickerman *et al.*, the defendants.

268 ARTHUR HEURTLEY, called as a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Dupee and testified as follows:

Testimony of Arthur Heurtley.

Q. What is your name?

A. Arthur Heurtley.

Q. Where do you reside, Mr. Heurtley?

A. Oak Park.

Q. Cook county, Illinois?

A. Cook county, Illinois.

Q. What is your business?

A. Secretary of the Northern Trust Company.

Q. How long have you been secretary of the Northern Trust Company?

A. Since July, 1892.

Q. This is a bill filed on behalf of the Northern Trust Company and Ovid B. Jameson to foreclose a mortgage. The Northern Trust Company is a corporation, is it?

A. Yes, sir.

Q. Organized under the laws of what State?

A. The State of Illinois.

Q. In what place is its principal office?

A. Chicago, Illinois.

Q. Where, if you know, does Ovid B. Jameson reside?

A. Indianapolis, State of Indiana.

Q. Do you know whether he resided there at the time this bill was filed?

A. He did.

Q. The defendant in this cause is the Columbia Straw Paper Company. Is that also a corporation?

A. Yes, sir.

Q. Do you know under the laws of what State it was organized?

A. Under the laws of the State of New Jersey.

Q. This is a bill to foreclose a mortgage, a copy of which is attached to the bill of complaint herein. Have you the original mortgage?

A. I have.

Q. Will you please produce it? (Witness produces same.)

A. I do so.

By consent of counsel, it is agreed that the original may be withdrawn.

Q. You may state whether a correct copy of that mortgage is attached to the bill of complaint in this cause.

A. It is.

Counsel introduces in evidence the original mortgage and the same is marked "Complainant's Exhibit A, H. W. B., 10, 24, '95."

Q. This mortgage states that it is executed to secure one thousand

bonds of the denomination of one thousand dollars each, executed by the Columbia Straw Paper Company, and that these bonds are to be certified by the Northern Trust Company, one of the trustees named in the mortgage. You may state, if you know, whether these one thousand bonds of the denomination of one thousand dollars each were in fact so certified by the Northern Trust Company.

A. They were.

Q. At the time, or about the time of the delivery of the mortgage?

A. Yes, sir.

Q. You may state also, if you know, whether these one thousand bonds referred to were in fact issued by the Columbia Straw Paper Company.

A. They were.

Q. That is within your personal knowledge as secretary of the Northern Trust Company?

A. It is.

Q. You may state, if you know, whether the contents of these one thousand bonds are as set forth in the mortgage and the bill of complaint in this cause.

A. They are.

Q. State if you know whether a portion of the property secured by that mortgage is situated in the northern district of the State of Illinois.

A. It is.

Q. It is stated in said mortgage that the Columbia Straw Paper Company would redeem and discharge said issue of bonds in the manner therein stated, one hundred of said bonds on the first day of December, 1893. Do you know whether said Columbia Straw Paper Company did discharge said bonds on the first day of December, 1893, or at any time?

A. It did not.

Q. It is also stated in said trust deed that said company would discharge one hundred and five of said bonds on the first day of December, 1894. Do you know whether it did discharge said one hundred and five bonds on said first day of December, 1894, or at any time?

A. It did not.

Q. Has the company discharged any of its said one thousand bonds?

A. It has not.

Q. I will ask you at what times the interest on these bonds fell due, that is, what times in the year?

A. The first day of June and the first day of December.

Q. Then the interest fell due on the one-thousand-dollar bonds on the 1st day of June, 1894, did it not?

A. It did.

270 Q. State whether you know if the interest on these bonds—the interest falling due the 1st of January, 1894—was paid?

A. It was not.

Q. How was it December 1, 1894?

A. It was not paid.

Q. How was it June 1, 1895?

A. It was not paid.

Q. Has any part of its interest coupons, due June 1, 1894, December 1, 1894, and June 1, 1895, been paid?

A. Not that I am aware of.

Q. Should you be aware of it if it had been done?

A. I think so.

Q. Is the Columbia Straw Paper Company solvent or insolvent?

How was it when this bill was filed?

A. Insolvent.

Q. You may state whether at any time the trustees mentioned in the mortgage in evidence declared the principal and interest owing upon the bonds of the Columbia Straw Paper Company to be due and immediately payable?

A. They did.

Q. You may state whether such declaration was reduced to writing?

A. It was reduced to writing.

Q. Have you it here?

A. I have.

Q. Please produce it?

(Witness produced document.)

A. I do so.

Q. What is the date of that declaration?

A. January 22, 1895.

Q. By whom is it executed—if you know?

A. By the Northern Trust Company, as trustee, and by Ovid B. Jameson also as trustee.

Q. Will you produce that declaration in evidence?

A. I will.

The same is marked "Complainant's Exhibit B—H. W. B., 10, 24, '95," and is in words and figures as follows, to wit:

271

"CHICAGO, January 22, 1895.

To Columbia Straw Paper Company:

A judgment having been entered against you in the court of George W. Underwood, justice of the peace, of Cook county, Illinois, on the twenty-second day of January, 1895, in favor of James Flanagan, and execution upon said judgment having been sued out against your property, and you having failed to forthwith remove, discharge or pay said execution, the undersigned as trustee under the trust deed executed by you to them under date of December 31, 1892, do hereby declare the principal and all interest

owing upon the one thousand bonds named and described in said trust deed to be immediately payable.

(S'g'd) THE NORTHERN TRUST COMPANY,
By BYRON L. SMITH, *Its President*,

Attest: ARTHUR HUERTLY, *Secretary*.

[SEAL.] OVID B. JAMESON, *Trustees.*"

It is agreed by and between counsel that a copy of the foregoing instrument shall be substituted for the original and the original returned to the Northern Trust Company, with the agreement that it shall be produced on the trial of the cause if desired by any party.

Q. Mr. Huertley, please state whether the trustees mentioned in this cause, namely, the Northern Trust Company, and Ovid B. Jameson, had possession of the mills and other property of the defendant, The Columbia Straw Paper Company, being the property described in the mortgage in this cause, at the time and prior to the filing of the bill in this cause?

A. They had.

Q. This bill appears to have been filed on or about the 24th of January, 1895. I will ask you how much is due upon these two thousand bonds which you have already testified in regard to?

A. The principal, amounting to one million dollars, together with interest upon the same.

Q. Since what date?

A. Since the first of December, 1893.

Q. I understand you then the principal is due, and also the coupons due June 1st, 1894, and all subsequent coupons?

A. Yes, sir.

272 Cross-examination by Mr. GRESHAM:

Q. Mr. Huertley, how is it you know the company issued the one thousand bonds referred to in the mortgage?

A. How do I know that?

Q. Yes.

A. The bonds were returned to the company, turned over to the company by the Northern Trust Company after certification. They were again placed in our hands and issued under certain orders.

Q. Orders from whom?

A. Orders from the straw paper company.

Q. To whom were they issued?

A. To various parties.

Q. Under—

A. Under direction.

Q. Who were these parties?

A. I could not give you a full list at the present time, because I do not remember, as there were a good many different orders.

Counsel for defendants requests witness to produce a list of parties to whom these bonds were issued; and it is agreed that he shall do so at some subsequent hearing.

Q. How did you learn about the judgment in favor of Flannigan, referred to in the declaration declaring the principal and interest due, had been taken? Or how did the Northern Trust Company learn of the fact?

A. I do not remember just at this moment how it was brought to my attention; I know we were formally notified of the fact.

Q. You do not know by whom?

A. I do not remember at the present time.

Q. Was it a notice in writing?

A. Of that I could not tell you.

Q. Was it a notice given by a holder of the bonds?

A. As before stated, I do not remember at the present time the circumstances under which that notice was received.

Q. Is there any particular means by which you could refresh your memory on this particular point?

A. I think possibly there is.

Q. Well, if you will do that, at some subsequent time we would like to ask you about this particular subject. Do you know whether any examination was made by any one on behalf of the Northern Trust Company to ascertain whether the proceedings under which this judgment was taken were regular?

A. The attorneys for the Northern Trust Company attended to that matter, sir.

273 Q. Who were the attorneys for the Northern Trust Company?

A. Messrs. Dupee, Judah, Willard & Wolf.

Q. Had they ever been the attorneys or solicitors for the Columbia Straw Paper Company, that you know of?

A. I have no knowledge of that fact, sir.

Q. At whose instance did the Northern Trust Company take possession of the property of the Columbia Straw Paper Company, the property described in the mortgage, prior to the filing of the bill to foreclose?

(Objected to upon the ground that, according to the provisions of the trust deed, the trustees were authorized, in their discretion, to act without the request of anybody, under article IV.)

A. I do not remember at whose direct instance that was.

Q. Was it in the exercise of the discretion which the terms of the mortgage gave to the trustees that the trustees took possession?

A. I am not prepared to answer that.

Q. Who is the active man in the management of the affairs of the Northern Trust Company?

A. In what respect?

Q. Who is the executive man there?

A. Byron L. Smith, the president.

Q. Would Mr. Smith probably have this information?

A. I cannot answer that.

Q. Well, did you or Mr. Smith, in the particular transaction relating to the acceptance of the trust in this case and in compliance thereof, particularly represent the Northern Trust Company?

A. In respect to the trust?

Q. Yes.

A. At the outset?

Q. Yes.

A. Mr. Smith accepted the trust on behalf of the Northern Trust Company, as president.

Q. Then who looked after the affairs of the trust company in connection with the trusteeship in reference to this mortgaged property?

A. The officials and clerks of the trust department.

Q. Do you know what particular official of the trust company took possession, or had the trustee take possession, of the property of the Columbia Straw Paper Company?

A. What particular official?

Q. Yes.

A. I should say that they were all more or less interested in it.

274 Q. Whom do you mean by "all"?

A. The officers of the company, mainly the president.

Q. What other officers were there than the president and secretary?

A. Well, those are the principal officers of the trust department.

Q. When did you and Mr. Smith have a conference about this notice that you caused to be served on the Columbia Straw Paper Company?

A. I cannot answer that question.

Q. Why not?

A. I do not remember whether we had a conference on the subject or not.

Q. Where was that notice prepared?

A. That I could not tell.

Q. By whom was it prepared?

A. Presumably by our attorneys.

Q. Dupee, Judah & Willard?

A. I could not answer that definitely, I do not know.

Q. They were your attorneys?

A. They are.

Q. And were at the time the bill was prepared—and filed?

A. They were.

Q. Do you know whether the Northern Trust Company took possession of the property of the Columbia Straw Paper Company before or after the judgment was taken by Flaunnigan, on the 22d day of January, 1895?

A. After.

Q. Did you know of the pendency of the proceedings instituted by Flaunnigan?

A. I did not.

Q. How soon after learning of the judgment taken by Flaunnigan did the Northern Trust Company take possession?

A. I do not remember the exact time.

Q. It was on the same day, wasn't it?

A. That I do not recollect, whether it was that same day or the day after.

Q. Do you know Mr. Flannigan?

A. I do not.

Q. I suppose you keep a record of every transaction in which your company is trustee, do you not?

A. We endeavor to do so.

Q. And that would show all these facts that you have been interrogated on?

A. I suppose so.

275 Counsel for complainant offers in evidence a certified copy of the judgment in favor of *James Flannigan vs. The Columbia Straw Paper Company* rendered in a justice's court, before G. W. Underwood, justice of the peace, on the 22d day of January, A. D. 1895; also of the execution issued upon said judgment, and the return of the constable upon said execution; and same are marked "Complainant's Exhibit C, H. W. B., 10, 24, '95" and "Complainant's Exhibit D, H. W. B., 10, 24, '95," respectively, and are in words and figures as follows, to wit:

EXHIBIT C.

Transcript on Appeal from Justice, No. 65.

STATE OF ILLINOIS, }
County of Cook, } ss:

In Justice Court.

Before G. W. Underwood, Justice of the Peace.

JAMES FLANAGAN

vs.

COLUMBIA STRAW PAPER COMPANY, a Corporation
Organized under the State Laws of New
Jersey.

Assumpsit. De-
mand, \$200.

Plaintiff's costs: January 22, 1895.—Summons ordered and issued to Constable Cerf, Justice's fees, docketing returned January 28, 1895, at 3.00 case, \$2.75. p. m., and on the 22nd day of January, 1895, received by said constable — served the within writ on the within-named defendant, by delivering a copy thereof to Philo D. Beard, president of said defendant company in my county, January 22, 1895, 5.00 p. m. Plaintiff and defendant corporation, by its president, Philo D. Beard, came into open court, and defendant corporation, by its president, Philo D. Beard, waives service of process

Constable's fees: 276
Serving process and mileage, \$1.00.

and enters its appearance herein and consents to go to immediate trial, one witness sworn and examined, and six interest coupon notes introduced in evidence.

Whereupon it is considered by the court that the said plaintiff have and recover of the said defendant, the sum of one hundred and eighty dollars and costs of suit, and judgment ordered and entered therefor, January 22, 1895. On oath pla'ff's agent execution ordered and issued to Constable Cerf, and on the 27th day of March, 1895, returned by him: No property found, no part satisfied.

STATE OF ILLINOIS, }
Cook County, } ss:

I, G. W. Underwood, a justice of the peace in and for said county, do hereby certify that the foregoing is a true and correct transcript of the judgment given by me in the above-entitled suit, and that said transcript contains a full and perfect statement of all the proceedings before me, in the above-entitled cause.

In witness whereof, I have hereunto set my hand and seal this 24th day of October, 1895.

G. W. UNDERWOOD, [SEAL.]
Justice of the Peace.

(Endorsed as follows:) No. 2562. Transcript. Flanagan vs. Columbia Straw Paper Company. Appeal from G. W. Underwood, justice of the peace. Filed this — day of —, A. D. 189—. —, clerk.

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EXHIBIT D.

Complainant's Exhibit D—H. W. B., 10, 25, '95.

Execution.

STATE OF ILLINOIS, }
Cook County, } ss:

The People of the State of Illinois to any constable of said county, Greeting:

We command you, that — the goods and chattels of Columbia Straw Paper Company, a corporation, in your county, you make the sum of one hundred and eighty dollars and — cents, judgment and interest thereon, from the 22nd day of January, 1895, and four dollars and 65 cents costs, which James Flanagan lately recovered before me, in a certain plea against the said Columbia Straw Paper Company, and hereof make return to me within seventy days from this date.

Given under my hand this 22nd day of January, A. D. 1895.
(Immediate.)

G. W. UNDERWOOD, [SEAL.]
Justice of the Peace.

(Endorsed on back as follows:)

Received this execution this 22nd day of Jan'y, 1895, at 5.24 o'clock p. m.

A. M. CERF, *Constable.*

This execution returned "No property found;" no part satisfied; this 27th day of March, 1895.

A. M. CERF, *Constable*.
(O K ed.)

STATE OF ILLINOIS, }
Cook County. }

I, G. W. Underwood, a justice of the peace in and for the said county, do hereby certify that the within is a true and correct copy of an execution as issued by me in the case of James Flanagan vs. Columbia Straw Paper Co., on the 22nd day of Jan'y, 1895.

Given under my hand and seal this 24th day of Oct., 1895.

G. W. UNDERWOOD, [SEAL.]
Justice of the Peace.

278 Recess until 3.00 p. m.

3 p. m.—Continuation after recess.

Present: Same counsel.

Testimony of Arthur Heurtley.

ARTHUR HEURTLEY.

Direct examination (resumed) by Mr. DUPEE:

Q. Mr. Heurtley, you produced this morning a declaration in writing made by the trustees under the mortgage in controversy, and you were asked as to whether the trustees, in their discretion, executed that declaration. I wish you would state the facts in connection therewith, which are within your knowledge.

A. Upon receiving notice of the entry of the judgment and the execution, and consulting with the other trustee, Mr. Jameson, and also upon receipt of, taking that into consideration, together with the request made by certain bondholders to take action in the matter, the trustees elected in their discretion, as provided in the trust deed, to declare the bonds due and payable.

Q. And the interest, I suppose?

A. Principal and interest.

Q. Their election was correctly stated in the written instrument, was it?

A. It was.

Q. You were also asked to produce a list of the parties to whom bonds were delivered by the Northern Trust Company upon the request of the Columbia Straw Paper Company. Have you with you that list?

A. I have.

Q. Will you please produce it?

A. I will.

(Witness produces said list.)

Q. This is a correct list, is it?

A. It is a correct list; yes, sir.

Counsel for complainant offers said list in evidence, and same is marked "Complainant's Exhibit E—H. W. B. 10, 24, '95," and is in words and figures as follows, to wit:

EXHIBIT E.			
279	Names.	Date.	No. of bonds.
996-1000.....	E. Stein.....	Ap'l 5	5
151-657 (Ex. 200-213).....	Samuel Untermeyer, Ex 251-263; Ex. 396-408.....	" 8	469
870-874.....	Wm. A. Starin.....	" 12	5 Friend of Stein.
(900-904)-(915-924) 6:8 to 665,			
910-914.....	John D. Hood.....	" 12	28
753 to 767.....	Edwin L. Brown.....	" 13	15 Mill-owner.
925-929: 935-936: 930-934.....	John D. Hood.....	" 18	12
856-860.....	" " ".....	May 2	5
895-899.....	Chas. A. Dupree.....	Ap'l 28	5
801-810.....	E. G. Church.....	May 6	10
888-892.....	B. M. Frees.....	April 28	5 Receipt May 10, '93.
866-869.....	John D. Hood.....	May 10	4
816-820.....	B. M. Frees.....	" 12	5
768-780.....	Hollis & Duncan.....	" 13	13 Paper-house.
937-941.....	Philo D. Beard.....	" 23	5
942-995; also 81-150.....	" " ".....	" 26	124
905-909.....	M. L. Willard.....	Ap'l 28	5
893-894.....	E. Stein.....	" 21	2
728-752.....	John B. Halladay.....	June 10	25
688-717.....	F. C. Trebein.....	" 13	30
831-850.....	John D. Hood.....	" 15	20 Receipt June 16.
36-80.....	" " ".....	" 16	45
861-865.....	Galusha Emigh.....	" 19	5
875-887.....	John D. Hood.....	July 16	13
821-830.....	E. Stein, treas.....	Aug. 1	10
791-800.....	Henry B. Utley.....	" 1	10 Mill-owner.
718-722-668-682.....	Philo D. Beard.....	Oct. 2	20
1 to 35-781-790 and 811-815.....	John D. Hood.....	Dec. 29	50
723-727.....	Eugene H. Dupree.....	Sept. 20, '94	5
200-213: 251-253.....	" " ".....	Oct. 24, '94	17

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See pages 19 and 20 for owners of the 33 bonds additional.

Testimony of Arthur Heurtley.

Q. This list, I notice, comprehends nine hundred and sixty-seven of the one thousand bonds of the company. Can you tell me what numbers of bonds are not included in these nine hundred and sixty-seven bonds?

A Yes, sir. (Referring to memorandum.) Nos. 851 to 855, both inclusive; Nos. 683 to 687, both inclusive.

MR. GRESHAM: Five bonds in each case.

The WITNESS: Five bonds in each case.

A. (Continuing.) Nos. 306 to 408, that is my recollection, and Nos. 254 to 263.

Q. The figures that you gave were intended to be inclusive, I understand, in all cases?

A. Yes, sir.

Q. And these bonds, these thirty-three bonds are where now?

A. They are in the possession of the Northern Trust Company.

Q. What do you know about these bonds?

A. These bonds were, I understand, loaned by the owners to the Straw Paper Company as collateral to sundry purchase-money mortgages which were already on some of the plants.

Q. At the time that they were purchased by the Straw Paper Company?

A. At the time they were purchased by the Straw Paper Company.

280 Q. Do you know to whom these bonds were originally issued by the Columbia Straw Paper Company?

A. Yes, I do.

Q. To whom?

A. They were originally issued—you mean these particular numbers?

Q. Yes.

A. These thirty-three bonds?

Q. Yes.

A. Nos. 254 to 263 were issued to Isaac Untermeyer.

Q. Prior to that time do you know to whom issued?

A. Yes, sir; to E. Stein.

Q. By the company?

A. By the company.

Q. Have you seen among the records of the Columbia Straw Paper Company any record of that?

A. I have.

Q. What did you see?

A. I saw a temporary bond certificate issued by the Columbia Straw Paper Company to E. Stein for one thousand bonds.

Q. Now, if you know, what happened afterwards as to these particular bonds?

A. That certificate was afterwards split up.

Q. That is the thousand-bond certificate?

A. Yes. And among the other certificates, No. 13 was issued to Isaac Untermeyer for bonds Nos. 251 to 300, both inclusive.

Q. What was given him at that time?

A. Temporary certificate No. 13, calling for the bonds of those numbers.

Q. Go on.

A. No. 22 to Randolph Guggenheimer for bonds Nos. 396 to 475, both inclusive; No. 50 to F. C. Trebein, for bonds Nos. 683 to 687, and also No. 36 to 50 and No. 688 to 717, covered in the same certificate; in all cases both inclusive; certificate No. 105 to Richard T. Higgins, for bonds 851 to 855, both inclusive. The above-mentioned parties these numbers, the bonds mentioned in these temporary certificates include the thirty-three bonds now held by the Northern Trust Company.

Q. As I have it, the Northern Trust Company now holds bonds 683 to 687, and the bonds issued to Trebein commence 688; is that correct?

A. No, sir; the bonds issued to Trebein commence 683 to 687.

Q. That is the form of the stock certificate?

A. Yes, sir; there were three lots of bonds in that certificate.

281 Q. Now state, if you know, what was done with these bonds or these certificates calling for these bonds, by these four owners of them?

A. The certificates were duly endorsed and the bonds were turned over to the Northern Trust Company, as I have before stated.

Q. As security for certain mortgage indebtedness?

A. As security for certain mortgage indebtedness from the Columbia Straw Paper Company, that was assumed by the Columbia Straw Paper Company.

Q. Do you remember to what parties that mortgage indebtedness was due by the Columbia Straw Paper Company?

A. I believe the name is Rhodes, Utter & Company.

Q. The indebtedness of the straw paper company to Rhodes, Utter & Company, assumed by the straw paper company was, if I am correctly informed, fifty thousand dollars at one time; do you know about that?

A. It has been so stated to me.

Q. Do you know whether a part of that was afterwards paid by the Columbia Straw Paper Company?

A. It was.

Q. What amount?

A. Seventeen thousand dollars.

Q. Leaving a balance of thirty-three thousand dollars?

A. Leaving a balance of thirty-three thousand dollars.

Q. And as you understand, these thirty-three bonds are held as security for that indebtedness?

A. Yes, sir.

Q. I will ask you whether, after the rendition of the judgment in this case in favor of Flanagan against The Columbia Straw Paper Company, the trustees under this mortgage were requested by some of the bondholders to elect to mature the indebtedness of the straw paper company and to take further proceedings in connection therewith?

A. They were.

Q. Under the trust deed?

A. Under the trust deed.

Q. Have you with you that request?

A. I have.

Q. Will you please produce it?

A. I will. (Witness produces document called for.)

Counsel for complainant offers said document in evidence and same is marked "Complainant's Exhibit F—H. W. B., 10, 24, '95," and is in words and figures as follows, to wit:

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EXHIBIT F.

To Northern Trust Company and Ovid B. Jameson, trustees for the bondholders of Columbia Straw Paper Company:

We, the undersigned owners of bonds of the Columbia Straw Paper Company, do hereby request, authorize and empower the trustees named in the mortgage given to secure said bonds, or either of said trustees, to institute and prosecute to the end any action or proceeding at law or in equity for the enforcement or protection of our rights as such bondholders, whether by a foreclosure of the mortgage or otherwise that they may deem proper, and in that be-

half to apply to any court of competent jurisdiction for the appointment of a receiver or receivers, or to take any other legal steps that may by the said trustees or either of them be deemed expedient or necessary in the protection of the interests of us, the said bondholders, and otherwise to execute the powers conferred by article IV of the deed of trust executed by said company on December 31, 1892.

Name.	Amount of bonds.
Leopold Herrman.....	\$5,000
By T. L. Herrman, att'y-in-fact.	
Charles Schram, M. D.....	5,000
Estate of Moritz Davidson, Jno. Benjamin, executor.....	5,000

To the Northern Trust Company and Ovid B. Jameson, trustees for the bondholders of the Columbia Straw Paper Company:

We, the undersigned owners of bonds of the Columbia Straw Paper Company, do hereby request, authorize and empower the trustees named in the mortgage given to secure said bonds, or either of said trustees, to institute and prosecute to the end any action or proceeding at law or in equity, for the enforcement or protection of our rights as such bondholders, whether by a foreclosure of the mortgage or otherwise that they may deem proper, and in that behalf to apply to any court of competent jurisdiction for the appointment of a receiver or receivers, or to take any other legal steps that may, by the said trustees, or either of them, be deemed

expedient or necessary in the protection of the interests of us, the said bondholders, and otherwise to execute the powers conferred by article IV of the deed of trust executed by said company on December 31, 1892.

Name.	Amount of bonds.
Randolph Guggenheimer.....	\$100,000
Samuel Untermeyer, by Isaac Untermeyer, his attorney-in-fact.....	89,000
Isaac Untermeyer.....	56,000
Moses Weinman.....	18,000
Wm. C. Heppenheimer.....	5,000
Otto Huber.....	25,000
Solomon Marx.....	20,000
Adolph Huffel.....	10,000
Emanuel Goldschmidt.....	5,000

To the Northern Trust Company and Ovid B. Jameson, trustees for the benefit of the bondholders of the Columbia Straw Paper Company:

We, the undersigned owners of bonds of the Columbia Straw Paper Company, do hereby request, authorize and empower the trustees named in the mortgage given to secure said bonds, or either of said trustees, to institute and prosecute to the end any action or proceeding at law or in equity for the enforcement or protection of

our rights as such bondholders, whether by a foreclosure of the mortgage or otherwise, that they may deem proper; and in that behalf, to apply to any court of competent jurisdiction for the appointment of a receiver, or to take any other steps that may by the said trustees, or either of them, be deemed expedient or necessary in the protection of the interests of us, the said bondholders, and otherwise to exercise the powers conferred by article IV of the deed of trust executed by the company on December 31, 1892.

Name.	Amount of bonds.
James Flanagan	Ten thousand dollars.
Mary F. Blake by James Flanagan, att'y.....	\$10,000.00
G. Edwin Jones	5,000

This was presented to the trustees prior to the making of the declaration by them which you put in evidence, was it?

A. I believe it was; I will state that it was.

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Testimony of Arthur Heurtley.

Cross-examination by Mr. GRESHAM:

Q. Who is this firm of Rhodes, Utter & Company you have just mentioned?

A. They were owners of one of the plants, one of the properties purchased by the Columbia Straw Paper Company.

Q. And the Northern Trust Company now holds these thirty-three bonds?

A. They do.

Q. As security for the loan of the Columbia Straw Paper Company to Rhodes, Utter & Company, is that it?

A. They are held in compliance with the terms of the section if the trust deed, they were deposited under those conditions.

Q. What section of the trust deed is that?

A. It is in a resolution, I should say, to be more correct.

Mr. DUPEE: The question to you is, what section of the trust deed? You better give some answer.

The WITNESS: I stated, in a resolution.

Mr. GRESHAM: On page three of the trust deed marked Exhibit

A? That would be your answer, wouldn't it?

The WITNESS: Yes, sir.

Q. Now the temporary certificate you say, was issued to Emanuel Stein?

A. Yes, sir.

Q. But that the permanent certificates for the bonds attached were issued to these different parties named, Untermeyer, Guggenheimer and so forth.

A. They were the same certificates, only they were split up. Temporary certificates were issued in place of that one for varying amounts.

Q. Well, the one certificate for one thousand bonds was not as a matter of fact issued to Stein?

A. It was issued to Stein.

Q. And delivered to him?

A. And delivered to him.

Q. Then did he redeliver that to the trust company before you issued the split certificates?

A. No, we did not issue the split certificates.

Q. Who issued the split certificates?

A. The Columbia Straw Paper Company.

Q. When it came to issuing the bonds or redelivering the bonds, who delivered the bonds?

A. The Northern Trust Company.

Q. When did it deliver the thousand bonds to Stein?

285 A. It delivered the thousand bonds to the straw paper company.

Q. Then you were mistaken in your testimony this morning—

A. Not at all.

Q.—that the Northern Trust Company delivered the bonds to these various parties who have been named?

A. No, sir.

Q. Then I misunderstood your testimony, is that it?

A. No, because the Columbia Straw Paper Company redeposited the bonds with the Northern Trust Company to hold the bonds subject to orders that were issued from time to time by the straw paper company, a list of which has been offered in evidence this afternoon.

Q. Why was the certificate for the thousand bonds delivered to Stein and then these subsequent split certificates delivered to the various parties that have been named?

Mr. DUPEE: State only what is within your own knowledge please.

The WITNESS: Yes, sir.

A. Why, the character of these certificates was temporary certificates, as I have explained before, issued pending the completion of the bonds by the engraver, the bonds were not ready for delivery.

Q. Why weren't the thousand bonds then delivered to Stein as the original temporary certificate called they should be?

A. That I could not tell you.

Q. How was it that these bonds of Guggenheimer and Trebine, Higgins and Untermeyer were to pay for those delivered to Stein for which the Northern Trust Company now holds the thirty-three bonds as collateral?

Mr. DUPEE: If you know.

Mr. GRESHAM: Yes, you may add that, "if you know."

A. Why I don't know.

Q. Now you say the Columbia Straw Paper Company was insolvent at the time of the filing the bill. How do you know that?

A. By the fact of the default of its interest, and by the fact of default upon the payment of its sinking fund and by failure to pay the principal or interest of its bonds when the same became due and payable.

Q. Where were these bonds payable?

A. The interest payable?

Q. Yes.

A. At the office of the Columbia Straw Paper Company.

286 Q. Did you present any of the bonds at the office of the Columbia Straw Paper Company at the time the interest became due in December, 1894?

A. I presume that we did in the regular course of our business.

Q. But you did not personally, yourself?

A. Not I myself, no.

Mr. DUPEE: You might ask him if the Northern Trust Company caused them to be presented.

Mr. GRESHAM: Do you know whether the Northern Trust Company caused any of the bonds to be presented to the Columbia Straw Paper Company, or demand to be made?

A. Yes, a demand was made for the payment of the bonds.

Q. When?

A. On the 22nd day of January, 1895.

Q. You don't know whether any demand was made on the first day of December, 1894?

A. I could not say.

Q. Now, in your affidavit you state that the Columbia Straw Paper Company were requested to pay the findings in the Flanagan judgment. By whom was that request made?

A. What affidavit?

Q. Attached to the bill. That is, you swore to the—well, change that. It is alleged in the bill that the Columbia Straw Paper Company were requested to pay the Flanagan judgment. Now, you verified the bill. By whom was that request made, and when, if you know?

A. I do not remember when that was made or who the officer was that made it.

Q. Or the time?

A. I know that it was made.

Q. Or what answer was made by the Columbia Straw Paper Company, you don't remember that either?

A. Except that they did not pay it.

Q. Well, from what source did you get your information on which to make the affidavit that this allegation just spoken of is true?

A. This particular one?

Q. Yes.

A. As I remember, partly from our president, and partly from our attorneys.

Q. Isn't it as a matter of fact true that the bill was presented to you drawn and said to be all right that you could make this on information and belief; isn't that about the way you verified the bill?

287 A. No, the material statements I endeavored to verify of myself before signing it.

Q. You don't recollect then as a matter of fact who made the demand on the Columbia Straw Paper Company for the payment of the Flanagan judgment?

A. I don't positively, no.

Q. Did you see Mr. Jameson sign the declaration presented to the Columbia Straw Paper Company, declaring, electing to declare the principal and interest indebtedness due?

A. I did.

Q. Where was that done?

A. To the best of my knowledge and belief, in the office of the Northern Trust Company.

Q. When was that done?

A. The 22d day of January, 1895.

Q. Do you recollect what time of day it was?

A. I do not, but it was very late in the afternoon.

Q. Well, Mr. Jameson lives in Indiana, how did he happen to be in Chicago on that day?

A. I cannot tell you. I do not know.

Q. Had you ever met him before that time?

A. Once, I believe.

Q. Do you know whether the Northern Trust Company requested him prior to the 22d day of January, 1895, to be here on that day?

A. I do not.

Q. Do you know whether any officer of the Northern Trust Company requested him prior to that time to be here?

A. I do not.

Q. Was he expecting Flanagan to take his judgment on the 22d day of January, 1895?

A. I could not say. I do not know.

Q. Do you think it was just a mere coincidence that he was here the day that Flanagan took his judgment?

A. I cannot say that either.

Q. Well, did the Northern Trust Company and its attorneys have any consultation prior to the 22nd day of January, 1895, with reference to steps looking to the foreclosure?

A. That I am unable to state also from my own knowledge.

Q. When did you first see this request of the bondholders here which has been put in as an exhibit?

A. I don't remember the date.

Q. How long prior to the 22nd day of January, 1895?

A. I could not say positively how long.

288 Q. By whom on behalf of the trust company, with the attorneys, were the consultations held with reference to the beginning of foreclosure proceedings?

A. Why, that I am unable to answer.

Q. Did you or Mr. Smith confer with an attorney in reference to it?

A. I presume, Mr. Smith.

Q. Who were the attorneys for the Northern Trust Company at and prior to the bringing of proceedings in this case?

A. Messrs. Dupee, Judah, Willard and Wolf.

Q. Do you know what member of the firm the consultations with reference to bringing this suit were held with?

A. I do not.

Q. Were these consultations held with Mr. Smith, do you think?

A. I presume they were.

Q. They were not held with you?

A. No.

Q. Did Guggenheimer and Untermeyer figure in any way or shape as attorneys or counsel, either of the trustees or of the Columbia Straw Paper Company prior to the filing of the bill to foreclose the mortgage?

A. Not that I am aware of.

Q. Did the trust company ever have any dealings with Guggenheimer & Untermeyer with reference to the execution or foreclosure of this mortgage?

A. Not that I am aware of.

Q. Did they ever have any correspondence with Guggenheimer and Untermeyer with reference to the execution of the mortgage, or any steps looking to its foreclosure?

A. No, sir; I believe not.

Q. Now, when was the property of the Columbia Straw Paper Company—I believe this is one of the subjects you were going to refresh your recollection upon during the noon hour—turned over to the Northern Trust Company?

A. By whom?

Q. When, I say.

A. In what manner? I do not know as I quite understand your question.

Q. When did the Northern Trust Company take possession of the property of the Columbia Straw Paper Company?

A. On the morning of the 23rd of January, 1895, and some of the mills in the neighborhood they did on the night of the 22nd.

Q. How was the transfer made?

A. By simply taking possession, that was all.

289 Q. What officer on behalf of the Northern Trust Company, took possession?

A. There were various agencies, agents who were sent out.

Q. Who took possession, here in Chicago?

A. Mr. George P. Jones, as custodian for the Northern Trust Company.

Q. Who took possession of the books and papers for the Northern Trust Company?

A. My recollection is that these did not come under the jurisdiction of the company.

Q. Then, the company did not take possession of the books and papers of the Columbia Straw Paper Company, did it?

A. I believe only the office.

Q. Does the mortgage provide that the trustees should have possession of everything?

A. The trustees took possession of everything covered by the mortgage.

Q. Then, you understand that the mortgage did not cover the books and papers, accounts, and muniments of title? (Copy of bill handed witness.) I am asking you for your recollection now.

A. For an interpretation of it, I should refer you to the attorney.

Q. Was not that question up and determined one way or the other about the time you took possession?

A. I believe it was.

Q. Well, as a matter of fact, did the Northern Trust Company take possession of the books, papers, accounts, and muniments of title of the Columbia Straw Paper Company?

A. If these were covered by the trust deed, yes.

Q. That don't answer the question. Answer the question if you can, if you are able to.

A. I should say to the best of my knowledge and belief that they did of all the property in the office.

Q. Then the books and papers and muniments of title would be either in possession of the Northern Trust Company or the receiver at the present time?

(Objected to by counsel for complainant, as calling for a conjecture or guess, and not for a statement of fact.)

A. It would simply be a conjecture on my part with regard to the receiver.

Q. When the parties presented orders of the Columbia Straw Paper Company to the Northern Trust Company for the bonds, did any money pass?

290 A. That I am unable to say; not that I know of; I do not know.

Q. Was there any sum deposited by any one with the Northern Trust Company against these bonds before you issued the certificate to Stein and then subsequently to the other parties?

A. The Northern Trust Company did not issue any certificates.

Q. I misunderstood you then.

Mr. DUPEE: He has not said the company issued any certificates.

Mr. GRESHAM:

Q. Temporary certificates?

A. The Northern Trust Company never issued any.

Mr. DUPEE: He has not said that the Northern Trust Company ever issued a certificate.

Mr. GRESHAM: Didn't you certify to the certificate?

A. No, sir.

Q. I misunderstood you then. What was this instrument that was issued to Stein calling for the thousand bonds?

A. It was a temporary certificate, issued in lieu of the bonds by the Columbia Straw Paper Company.

Q. And certified to by the Northern Trust Company?

A. No, sir.

Q. Did you certify the bonds that were finally issued?

A. Yes, sir.

Q. After the bonds were engraved and printed, I understand, they were deposited and certified to by the Northern Trust Company, that they were deposited with the Northern Trust Company and on the order of the Columbia Straw Paper Company the Northern Trust Company delivered the bonds to these various parties that were named, that you named in your testimony?

A. Yes, sir.

Q. Do you know whether any money was paid into the treasury of the Columbia Straw Paper Company or any money delivered to the Northern Trust Company at the time you delivered, the Northern Trust Company delivered the bond on the orders as they were presented?

(Objected to by counsel for complainant as not a proper subject for cross-examination and because defendant represented by counsel examining have admitted the issue of the bonds in question in their answer in this case.)

A. I do not.

Q. Now, are you sure that the bonds went out of the Northern Trust Company on the order of the Columbia Straw Paper Company?

A. Yes.

291 Q. Didn't they go out on the order of Henry M. Wolf as trustee?

A. No.

Q. To whom were the bonds delivered at the time they passed out of the possession of the Northern Trust Company?

A. To the parties named in Exhibit E.

Q. By whom were the bonds placed in the hands of the Northern Trust Company?

A. The Columbia Straw Paper Company.

Q. Did Henry M. Wolf, as trustee, deliver the bonds to the Northern Trust Company?

A. The Columbia Straw Paper Company delivered the bonds.

Redirect examination by Mr. DUPEE:

Q. Refreshing your memory, I will ask you if before swearing to the original bill of complaint in this cause, you satisfied yourself that the constable under the execution in the case of Flanagan against The Columbia Straw Paper Company, had made a demand upon the company for the payment of the execution?

A. I did.

Q. I will ask you also whether Mr. Young, on behalf of the Northern Trust Company, made a similar demand?

A. Upon whom?

Q. Upon the Columbia Straw Paper Company?

A. Mr. Young made a demand, yes, sir.

Recross-examination by Mr. GRESHAM:

Q. Who is Mr. Young?

A. One of the office attorneys.

Q. Of the Northern Trust Company?

A. Of the Northern Trust Company.

Q. What time did he make the demand?

A. I don't recollect just the hour.

Mr. DUPEE: The day?

A. The 22d of January, 1895.

Mr. GRESHAM: Did you examine the proceedings before Justice Underwood?

A. I don't recollect whether I saw them—I think I saw the papers at the office of our attorney.

Q. A certified copy of the justice's—

A. I understand so.

292 Q. You did not see the justice or the constable?

A. No.

Q. Don't know whether the constable, as a matter of fact made a demand, except as you saw from the appearance of the transcript?

A. To my knowledge that was the evidence that I had.

Q. You say in the office of the attorneys; who were the attorneys, what attorneys do you mean?

A. Messrs. Dupee, Judah, Willard and Wolf.

Q. When was that, in the afternoon, morning or evening?

A. In the afternoon, I believe.

Q. When you went to the office of Dupee, Judah, Willard and Wolf, on the 22d of January, was this bill which was filed here, in print, in the form that it is?

A. That I am unable to say.

Q. What is your recollection?

A. I do not know.

Q. Well, it was printed, of course, when you signed it?

A. It was.

Q. Do you know where it was printed?

A. I could not swear to it, no.

Q. Chicago or New York?

A. I am sure I could not tell you.

Q. Who paid the bill for printing it?

A. That I do not know.

Q. Did the Northern Trust Company?

A. I said I did not know.

Q. Did the Northern Trust Company pay the bill?

A. Not that I recollect.

Q. Did the bondholders who requested the Northern Trust Company to institute proceedings pay the bill?

A. I do not know.

Q. Did they advance the Northern Trust Company any funds out of which to carry on the proceedings?

A. Not that I am aware of.

Adjourned to 2.30 p. m., Friday, October 25, 1895.

ARTHUR HEURTLEY.

Subscribed and sworn to before me this 25th day of October, 1895.

HENRY W. BISHOP,
Master in Chancery.

(Endorsed :) Filed Dec. 21, 1895. S. W. Burnham, clerk.

293 Afterwards, to wit, on the twenty-third day of December, in the December term of said court, 1895, in the record of proceedings thereof in said entitled cause, before the Hon. John W. Showalter, circuit judge, appears the following entry, to wit :

Order Extending Time.

Entry.

NORTHERN TRUST COMPANY ET AL.	} In Chancery. 23614.
<i>vs.</i> COLUMBIA STRAW PAPER COMPANY.	

On motion, it is ordered that the time for defendants and cross-complainants, Harry W. Dickerman *et al.*, to take proofs, be extended for one week from this date, this order to have the effect of an extension of the time last granted to them in which to close proofs, to and including December 30, 1895.

294 Afterwards, to wit, on the tenth day of January, 1896, came Charles A. Miller by his solicitors and filed in the clerk's office of said court his petition to be made a party defendant in said cause; which said petition is in the words and figures following, to wit :

Order on Petition of C. A. Miller.

Petition of Charles A. Miller.

UNITED STATES OF AMERICA,	} ss :
<i>Northern District of Illinois,</i>	

In the Circuit Court of the United States for the Northern District of Illinois. In Equity.

THE NORTHERN TRUST COMPANY and OVID B.	} Original Bill.
Jameson, as Trustees,	
<i>vs.</i> COLUMBIA STRAW PAPER COMPANY.	

and

HARRY W. DICKERMAN, as Trustee of the Second	} Cross-bill.
National Bank of Rockford, Illinois, <i>et al.</i>	
<i>vs.</i> THE NORTHERN TRUST COMPANY and OVID B.	
Jameson, as Trustees; Columbia Straw Paper	
Company, Philo D. Beard, <i>et al.</i>	

And now comes Charles A. Miller and moves the court for leave to be made a party defendant to said original bill, with leave to

plead or answer thereto, and submits to the court the annexed petition in support of this motion.

CHARLES A. MILLER,
By JOHN S. COOPER,
His Solicitor and Counsel.

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Petition of C. A. Miller.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } ss:

In the Circuit Court of the United States for the Northern District of Illinois. In Equity.

THE NORTHERN TRUST COMPANY and OVID B. Jameson, as Trustees,	} Original Bill. 23614-832.
vs.	
COLUMBIA STRAW PAPER COMPANY.	
and	

HARRY W. DICKERMAN, as Trustee of the Second National Bank of Rockford, Illinois, <i>et al.</i>	} Cross-bill.
vs.	
THE NORTHERN TRUST COMPANY and OVID B. Jameson, as Trustees, Columbia Straw Paper Company, Philo D. Beard, <i>et al.</i>	

To the honorable the judges of the circuit court of the United States for the northern district of Illinois, in chancery sitting:

Respectfully sheweth unto your honors, your petitioner, Charles A. Miller, that he is a citizen of the State of Illinois, residing at St. Charles, in the county of Kane, in said State of Illinois.

That he is the owner and holder of one hundred and fifty (150) shares of the preferred stock of The Columbia Straw Paper Company, the defendant to said original bill in the above-entitled cause; that said shares are of the nominal value of one hundred dollars (\$100) each; that the total amount thereof is the sum of fifteen thousand dollars (\$15,000) per value; that said preferred stock is evidenced by certificate number eight (8) of said company, bearing date December 17th, 1892, and which certificate was duly executed by the proper officers of said company, under its corporate seal.

That he is also the owner and holder of certificate number twenty-three (23) of said Columbia Straw Paper Company, for three hundred (300) shares of the general or common stock of said company, of the par value of one hundred dollars (\$100) each, amounting, in the aggregate, to the sum of thirty thousand dollars (\$30,000)

296 par value, and which certificate was duly executed and delivered to him under date of December 17th, 1892, by the proper officers of said company, under its corporate seal.

Your petitioner further sheweth unto your honors that, in the month of January, 1866, he became interested, as co-owner and co-

partner, in the property known as the "St. Charles paper mill," located at St. Charles, in said Kane county, in the State of Illinois; the description and boundaries of which said property are more particularly set forth in a deed of said property, a correct copy of which is annexed hereto, made part hereof, and marked "Schedule A;" that your petitioner, in the year 1888, became the sole owner of said property, and owned the same until the transfer of the title thereof by him to Emanuel Stein, one of the defendants to said cross-bill herein, as hereinafter set forth.

That the said mill was built of brick, stone and wood, in a substantial manner, and had a capacity of manufacturing about six tons of wrapping paper per day; which business of manufacturing wrapping paper was the business for which said mill had been constructed and had been operated for a period of over twenty-six years: that said mill had been in constant operation, during regular working days, throughout said period of twenty-six years and up to the time your petitioner sold the same, as hereinafter set forth: that the net profits made from said mill for ten years prior to July, 1892, had been about the sum of five thousand dollars (\$5,000) per annum: that on the sixth day of July, 1892, the said mill was worth about the sum of fifty thousand dollars (\$50,000): that the said mill had been practically rebuilt within a period of five years prior to July, 1892, during which time a great deal of new machinery had been placed in the mill.

That on the sixth day of July, 1892, after considerable negotiation between your petitioner and the agent of Philo D. Beard and Thomas T. Ramsdell, two of the defendants to said cross-bill, your petitioner entered into an option contract with said Beard and Ramsdell, whereby he agreed to sell to them the said mill, with all its appliances, machinery, fixtures, tools and structures, together with the said real estate, for the sum of sixty-two thousand five hundred dollars (\$62,500), of which the sum of twenty-five thousand dollars (\$25,000) should be in cash, twelve thousand five hundred dollars (\$12,500) in the preferred stock of such corporation as said Beard and Ramsdell might organize, and twenty-five thousand *thousand* dollars (\$25,000) in the common stock of such corporation.

That about the month of October, 1892, one Emanuel Stein, a defendant to said cross-bill, as assignee of the said Thomas T. Ramsdell, and the said Philo D. Beard agreed with your petitioner that they would accept the said option contract, with the following modifications, namely: That instead of twenty-five thousand dollars (\$25,000) in cash being paid, the sum of twenty thousand dollars (\$20,000) should be paid by them in cash and fifteen thousand dollars (\$15,000) in the preferred stock of such corporation as they should organize, and thirty thousand dollars (\$30,000) in the common stock of such corporation; and that about the month of December, 1892, your petitioner transferred to them the control of the said property, which was afterwards followed by a formal deed thereof by your petitioner and wife to said Emanuel Stein, executed on or about the twentieth day of February, 1893. And your petitioner sheweth that whilst at the time of the transfer of

the control of said property to said Stein and Beard, and at the time of the making of the deed therefor, the said property was worth about the sum of fifty thousand dollars (\$50,000), the said sum of twenty thousand dollars (\$20,000) is all the benefit or advantage of any kind, name or nature which he has received from said Stein or said Beard, or any other person, for said property, save and except the said shares of common and preferred stock, as hereinabove set forth.

Your petitioner further sheweth unto your honors that he has recently, and within the last two months, learned of the proceedings in this honorable court in the above-entitled cause and cross-cause, wherein the complainants, as trustees, in the original bill are seeking to foreclose the mortgage upon said property, and wherein the complainants in the cross-bill are seeking to defeat the foreclosure of said mortgage.

Your petitioner further represents and shows unto your honors that he is informed and believes, and so charges the same to be true, that the following facts with relation to said mortgage can be proven by your petitioner if he be allowed to become a party defendant to said suit, and to defend against the foreclosure of said mortgage, as hereinafter prayed :

That in the year A. D. 1892, before the combination hereinafter mentioned and described was formed, as hereinafter set forth, there were existing and in operation in the different States hereinafter named sixty-eight distinct and separate paper mills, each of which was held, owned and operated by distinct and separate individuals, copartnerships or corporations; in addition to which there were two others owned and operated by the same corporation, and all of said sixty-eight mills were in competition with each other in the manufacture of straw-and-rag wrapping paper, commonly known as "wrapping paper;" that the said seventy mills had a
298 capacity for the manufacture of about three hundred and ninety-four (394) tons per day, requiring a consumption, on the part of all of said mills, of about eight hundred (800) tons of straw per day; that said mills, as thus owned and operated (except as above stated), were competitors with each other in the business of manufacturing wrapping paper for the market and selling the same throughout the United States, and which wrapping paper was and is a necessary commodity or article of merchandise in the business and commercial world, entering into the daily life of the people, and used largely by grocers, bakers and butchers and other merchants; that the said seventy mills (with the exception of said two) were also competitors in creating a demand for straw throughout the respective territories where said mills were located and operated, and which straw, without such demand, was practically useless and without pecuniary value in many localities throughout the said northern district of Illinois, and throughout the State of Illinois and the other territory wherein said mills were located and in operation; that the consumption of such wrapping paper was at the rate of one hundred thousand (100,000) tons annually throughout the United States; that said seventy mills were located as follows :

In the State of Illinois, twenty-two (22) mills; in the State of Michigan, eleven (11); in the State of Ohio, fourteen (14); in the State of Indiana, seven (7); in the State of Iowa, seven (7); in the State of Nebraska, three (3); in the State of West Virginia, two (2); in the State of Missouri, one (1); in the State of Kansas, one (1); in the State of Minnesota, one (1), and in the State of Wisconsin, one (1).

That, during the early part of the year 1892, a combination was formed by a number of persons (some of whom are defendants to the cross-bill in the above-entitled cause), for the purpose of bringing all, or as many as possible, of said paper mills, and the plant, machinery and property connected with them respectively, under one ownership, management and control, by placing the title and ownership in one corporation, to be formed for that purpose, to the end that such management and control should be able, by limiting the manufacture of paper, to increase or decrease, at the will of those in control, the price of such wrapping paper, as merchandise or a commodity, and, at the same time, control the price of the straw bought for consumption at said mills, respectively, and thus fix or regulate the price of wrapping paper, as well as the straw used in the manufacture thereof, and also to fix or limit the amount or quantity of such wrapping paper to be manufactured, both in the State of Illinois and in said other States herein-

above named, and to restrain the trade or commerce in said 299 wrapping paper, throughout the United States. That, for the purpose of carrying out said plan or scheme, the parties to said combination procured option contracts on as many of said paper mills, and the respective properties connected therewith, as they were able to do, in substantially the same manner in which they procured the option contract from your petitioner; and that afterwards, having procured option contracts for the purchase of a great number of said mills, and the plants and properties respectively connected therewith, and on substantially all of the mills in operation in the States of Illinois, Wisconsin, Indiana, Michigan, Ohio, Iowa, Nebraska, Missouri and Kansas, which the persons engineering said combination considered of value for the purposes of their proposed monopoly aforesaid, those options were assigned to the above-named defendant to the said cross-bill, Emanuel Stein. That the parties to said combination thereupon proceeded to incorporate the above-named defendant corporation, The Columbia Straw Paper Company, in the State of New Jersey, designating the city of Hoboken, in the county of Hudson, in said State, as the place in said State where the business of the company was to be conducted. That the places outside of New Jersey, where the business of the said company was to be carried on, were designated as all the States and Territories of the United States; and your petitioner annexes hereto and makes part hereof, marked "Schedule B," a copy of the papers and certificate for the incorporation of said Columbia Straw Paper Company.

And your petitioner further sheweth unto your honors that the total amount of the capital stock of said company was fixed at four million dollars (\$4,000,000), divided into one million dollars

(\$1,000,000) of preferred stock, consisting of ten thousand (10,000) shares, of the par value of one hundred dollars (\$100) per share, and three million dollars (\$3,000,000) of common or general stock, consisting of thirty thousand (30,000) shares of the par value of one hundred dollars (\$100) per share; and that it was understood that said company would commence business with ten thousand (10,000) shares of preferred stock, of the par value of one million dollars (\$1,000,000), and with twenty-nine thousand nine hundred and eighty-eight (29,988) of common or general stock, of the par value of two million nine hundred and ninety-eight thousand and eight hundred dollars (\$2,998,800), and with one thousand two hundred dollars (\$1,200) in cash, being the proceeds of the sale of twelve (12) shares of the common or general stock of the company. That on the sixth day of December, 1892, the only capital or property which said company had (outside of its own shares of capital stock, 300 thereafter to be sold and issued) was the sum of one thousand two hundred dollars (\$1,200) in cash. That the same financial condition, with reference to said company, continued until the fourteenth day of December, 1892, when, at the alleged meeting of the stockholders of said company, it was resolved to authorize the mortgage sought to be foreclosed herein; a copy of which mortgage is annexed to the original bill of complaint in the above-entitled cause. That the same financial condition of the company continued to exist until after the deeds of the various properties were executed and delivered to said company by the said Emanuel Stein, and the mortgage sought to be foreclosed in the above-entitled cause was executed and delivered.

Your petitioner further shows unto your honors that, on the said fourteenth day of December, 1892, when said pretended stockholders' meeting was held in the said city of Hoboken, New Jersey, the said Emanuel Stein, as the agent or instrument of said combination, held nothing more than option contracts for the purchase, by him or his assignees, of various paper mills, with the plant, property and machinery belonging to each of them, respectively, upon which option contracts he had not paid one dollar of the purchase price: That, of the twenty-two mills in Illinois, he held option contracts for the purchase of nineteen; of the fourteen paper mills in Ohio he held option contracts for the purchase of nine; of the eleven in Michigan he held option contracts for the purchase of two; of the seven in Indiana he held option contracts for the purchase of three; of the seven mills located in Iowa he held option contracts for the purchase of three, and also held option contracts for the purchase of the one mill in Wisconsin, one out of the three mills in Nebraska, the one mill in Missouri, and the one in Kansas; so that, altogether, out of seventy mills (sixty-nine of which were in operation) in all of said nine States, he held option contracts for the purchase of forty mills, with all the respective plants, machinery, good will, property, appliances and control thereof, located in said States.

And your petitioner further sheweth unto your honors that said territory embraced in said nine States was practically the only territory in the United States of America, wherein the business of

manufacturing straw and rag wrapping paper, commonly known as "wrapping paper," could be conducted and carried on at a profit, on account of the ability of the manufacturers of said paper to obtain the proper kind of straw, at such rates as could be afforded for the economical and proper manufacture of wrapping paper; that throughout the said territory, wheat and rye straw, which are the articles chiefly entering into such manufacture, could and can be had in great quantities, and in the immediate vicinity of
301 where said mills were respectively located, and at a small price, because such use for straw, as a commodity, was and is practically the main and important use to which wheat and rye straw was and is therein applied; whilst, in the other portions of the United States, East and South, the production of wheat and rye straw is so limited in amount that the supply is inadequate for the manufacture of wrapping paper, and is brought in competition with other demands therefor, to an extent which has made it impracticable to conduct and carry on profitably the manufacture of wrapping paper in those last-mentioned States and localities.

Your petitioner further sheweth unto your honors that the forty paper mills, upon which the said Stein held option contracts, were substantially all the mills which the said combination desired to have, or which were or would be, in a substantial sense, competitors in the manufacture and sale of wrapping paper in the United States of America, there being only five other mills within said territory which could in any way be regarded as competitors in the manufacture of wrapping paper; the remaining twenty-five of the seventy above-mentioned paper companies being of small capacity and in dilapidated condition and unfit for use.

And your petitioner further represents and shows unto your honors, that on the said fourteenth day of December, A. D. 1892, when the said stockholders of said company pretended to authorize the execution of said mortgage for one million dollars (\$1,000,000), and to direct that the one million dollars (\$1,000,000) of bonds to be secured thereby, should be delivered to the said Stein, and that the one thousand, eight hundred dollars (\$1,800) in cash should be paid to him, and the one million dollars (\$1,000,000) of preferred stock, and the two million, nine hundred and ninety-eight thousand and two hundred dollars (\$2,998,200), par value of common or general stock, should be delivered to him in payment for said paper mills, and the plant, machinery, appliances, property and good will connected with each of them, respectively, the said Stein did not have the title to, nor own, any of said paper mills, or any of said property, plants, appliances or good will, but simply had option contracts, made with the owners thereof for the purchase of the same.

And your petitioner further sheweth unto your honors that the deeds for said respective forty paper mills, and the plant, machinery, appliances, good will and property connected with each of them, respectively, were made by the various owners thereof to the said Emanuel Stein, at different times in the early part of the year 1893,

and that the persons engineering said combination or scheme
 302 (and who at the same time had control of said corporation, and for whom the said Stein was the agent, being without pecuniary means of his own) advanced the money necessary to make the cash payments to the various persons with whom the said Stein held option contracts for the purchase of their respective paper mills, plants, etc. That the agreed contract price for all said forty mills, with the respective owners thereof, was as follows :

In cash, the sum of.....	\$766,000.00
In preferred stock, the sum of.....	629,000.00
In common stock, the sum of.....	1,258,000.00

Making a total of.....	\$2,653,000.00
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That, up to that time; that is to say, up to the time when the pretended contract for the purchase of said option contracts and the properties represented thereby was pretended to be entered into by said company, with said Stein, the said Stein had not paid out one dollar to the respective owners of said paper mills, and all he had invested, or all that the combination had invested therein, was simply their small expenses in promoting the said scheme.

And your petitioner shows that, whilst the total consideration to be paid, in the aggregate, to the respective owners of said paper mills, by said combination, through its said agent, Stein, in cash and preferred and common stock, was the sum of two million, six hundred and fifty-three thousand dollars (\$2,653,000), they caused the said corporation to make the purchase of the same from the said Stein, for the sum of five million dollars (\$5,000,000), in bonds, cash, preferred and common stock; or, in other words, in securities and money, representing over two million, three hundred and forty-seven thousand dollars (\$2,347,000) more than the said Stein had agreed to pay, and ultimately did pay, for said paper mills, and this before the said Stein had ever paid out one dollar therefor.

And your petitioner further sheweth unto your honors that the men who owned the option contracts, held for them by said Emanuel Stein, as their agent, were the same persons who caused the said Columbia Straw Paper Company to be incorporated, and then filled its board of stockholders and directors with their agents, who, in authorizing the said contract between said company and said Stein to be entered into, and the said mortgage to be made, and said bonds secured thereby to be executed and delivered, were acting as the willing instruments of their principals and employers: That holding contracts, in the name of said Stein,
 303 for the purchase of said forty paper mills, calling for a total purchase price of two million, six hundred and fifty-three thousand dollars (\$2,653,000), and no more, they caused the said corporation, also absolutely controlled by them, to purchase said paper mills for a total purchase price of five million of dollars; and that, instead of carrying out and perfecting their proposed monopoly and trust in the manufacture and sale of wrapping paper throughout the United States of America, by having the control of

all of said forty paper mills vested in a common board of trustees, they chose to accomplish those ends by using said corporation as the instrument, in strict accordance with their purpose and intention, from the time said combination was entered into: that the principal parties to said combination were Philo D. Beard and his associates, of Buffalo, New York; Randolph Guggenheimer, Isaac Untermyer, Maurice Untermyer, Moses Weiman and Samuel Untermyer, of New York, composing the firm of Guggenheimer & Untermyer, and their associates: that, in so far as any person or persons composing the board of directors and officers of said company were not the principals in said combination, they were the agents and obedient instrument- of the latter. And your petitioner is advised by his counsel, believes and charges the same to be true, that, under the facts hereinbefore set forth, together with the facts stated in the said mortgage sought to be foreclosed, and in the schedules forming part of said mortgage, and which were recorded therewith, that said combination was, and is, a trust or combination in restraint of trade, and constituted a monopoly, not only at the common law, but was, and is, in direct violation of an express enactment of the Congress of the United States, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2d, A. D. 1890; and that the same was, and is, a violation of an act of the General Assembly of the State of Illinois, entitled: "An act to provide for the punishment of persons, copartnerships, or corporations forming trusts, pools and combines, and mode of procedure and rules of evidence in such cases," approved June 11, 1891; in force July 1, 1891. That the procuring of said option contracts, the incorporation of said Columbia Straw Paper Company, the contract between said company and said Emanuel Stein, referred to in said mortgage, the execution of said pretended mortgage and bonds, and the delivery of the latter, the pretended acquirement of title, ownership, and control by said company, through said Stein, to said forty paper mills, were, each and every, a necessary and material part to the consummation of said scheme and combination to restrain the trade and commerce in wrapping paper throughout the United States, to form all said paper mills
304 into a combination to regulate or fix the price of the commodity or merchandise, known as wrapping paper, and to fix or limit the amount or quantity of such wrapping paper to be manufactured in said State of Illinois, and elsewhere in said other eight States of Indiana, Ohio, Michigan, Wisconsin, Iowa, Nebraska, Kansas and Missouri, and that the said mortgage and bonds were, and are, illegal and void, not only at the common law, but under and by virtue of the statutes of the United States and also of the State of Illinois.

Your petitioner is informed, believes, and charges the same to be true, that the said bonds were, as hereinabove set forth, and in accordance with the resolutions of the stockholders and the board of directors of said company, nominally sold and delivered to said Stein, in part payment for the said option contracts and the properties represented thereby, but were by the said Stein, under

he direction of the persons above mentioned, having the control and management of said combination, transferred and delivered to various other persons, most of whom were either active members of said combination, or their associates in the syndicate formed for the purpose of carrying said combination through to a consummation; and that the other persons, not belonging to said combination or associated with its promoters and managers in the syndicate, had full knowledge that the purpose of said combination, and the object of said corporation, was to obtain a monopoly and control of the manufacture and sale of wrapping paper throughout the States above mentioned.

And your petitioner is further advised by his counsel, believes, and charges the same to be true, that, under the facts hereinabove stated, and the facts contained in the mortgage sought to be foreclosed in the above-entitled cause, and in the schedules attached to and recorded with said mortgage, no person could become the owner and holder of said bonds, in good faith and without notice of the facts hereinabove set forth, so as to cut off the equities of the said corporation and those interested therein, to defend against said mortgage, on the ground, as hereinabove stated and set forth, that the same was and is illegal and void, and also that the said mortgage was and is, under a rule of property prevailing in said State of Illinois, a chose in action, and, upon the said attempt to foreclose said mortgage, the mortgagees and the beneficiaries thereunder (being the holders of the said bonds secured thereby) hold the said bonds and the said mortgage subject to all the equities.

And your petitioner further represents that he is informed, believes, and so charges the fact to be true (and that the same will be proven by testimony to be taken in said cause, if your petitioner shall be allowed to defend against the foreclosure of said mortgage), that after the said combination, through the instrumentality of said corporation, obtained control of said 305
forty paper mills, with the machinery, property and plants belonging thereto, respectively, they dismantled four of said mills, they closed down and ceased to operate seventeen, besides having three burnt up.

And your petitioner is further advised by his counsel, believes, and charges the same to be true, that, under the provisions of said mortgage and original bill of complaint filed herein, to foreclose the same, and the testimony taken by the complainants before Henry W. Bishop, Esquire, the master of this court, to whom said original cause was referred, the principal of said bonds is not legally due, and no foreclosure can legally be had of said mortgage, for the payment of the principal of said bonds, under said original bill in this suit; and that said corporation has not made, and is not making, any vigorous defense against the foreclosure of said mortgage, for the reason, as your petitioner is informed, believes, and so charges the fact to be, that the solicitors and counsel for said defendant company in said above-entitled cause, have been, as your petitioner is informed, believes, and so charges the fact to be, employed and retained by the same persons who are largely interested

in the said bonds sought to be foreclosed, and who have heretofore engineered the said combination.

And your petitioner humbly prays, in consideration of the promises, that he may be allowed to defend against said foreclosure of said mortgage and file an answer thereto, or to plead or demur to said original bill of complaint, as he may be advised by his counsel; and your petitioner will ever pray, etc.

CHARLES A. MILLER.

R. V. BOTSFORD,

His Solicitor.

JNO. S. COOPER, *Of Counsel.*

UNITED STATES OF AMERICA, }
Northern District of Illinois, } ss:

On this twenty-seventh day of November, A. D. 1895, personally appeared before me, Charles A. Miller, the petitioner, who signed the above and foregoing petition, and who, being by me first duly sworn, on oath deposes and states that he has heard the above petition, signed by him, read, and knows the contents thereof, and that the same is true of his own knowledge, except as to such matters and things as are therein stated to be on information and belief; and as to those, he believes it to be true.

ARTHUR L. GETTYS,

Notary Public, Cook County, Ill.

[SEAL.]

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SCHEDULE A.

Schedule A to Petition of C. A. Miller.

This indenture witnesseth that the grantors, Charles A. Miller and May E. Miller, his wife, of the town of St. Charles, in the county of Kane, and State of Illinois, for and in consideration of the sum of one dollar and other good and valuable considerations in hand paid, convey and warrant to Emanuel Stein, of the city of Chicago, county of Cook, and State of Illinois, the following described real estate, situated in the town of St. Charles, county of Kane, and State of Illinois, to wit:

All the real estate belonging to said grantors and situate in said Kane county, Illinois, and used or occupied as or in connection with any paper manufacturing or paper mill plant, and more particularly described as follows, to wit: Part of the east fraction of the southwest quarter (S. W. $\frac{1}{4}$) of section twenty-seven (27), township forty (40) north, range eight (8) east of the third principal meridian, described as follows, to wit:

Commencing at a point sixty (60) feet westerly of and in a line with the north line of Walnut street, from the southwest corner of block two (2) of the original town of St. Charles aforesaid, on the east side of Fox river; thence northerly and parallel with the east line of First street of said town one hundred and ten (110) feet; thence westerly and parallel with the north line of Walnut street

to Fox river; thence down said river to a point which would be in the north line of Walnut street were the same extended westerly to said river; thence easterly to the place of beginning; thence southerly parallel with the east line of First street, to intersect with Fox river; thence up said river to a point which would be in the north line of Walnut street were the same extended westerly to said river; thence easterly to the place of beginning. Also six hundred (600) square inches of water to be taken out of the race which runs through above-described premises at that spot where the paper mill now stands.

Together with all buildings and improvements standing and being on said land or belonging to said grantors and all belting, machinery, tools, shafting, boilers, water wheels and fixtures of every kind and nature, in, about or connected with said premises, belonging to said grantors, and all appurtenances, tenements and hereditaments unto said land appertaining and including all riparian rights and all rights and interests of the grantors herein in and to the water and water power used in connection with the said paper manufacturing or paper mill plant of said grantors; and also
 307 any and all contracts, rights, privileges, licenses and easements of any kind whatsoever, belonging to said grantors, whether by deed, contract or otherwise connected with the use, enjoyment or possession of the premises hereby conveyed.

Hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of the State of Illinois.

Dated this fourteenth day of December, A. D. 1892.

The words "paper" or "said paper" inserted on pages one and two and initials C. A. M. interlined before signing.

CHARLES A. MILLER. [SEAL.]
 MAY E. MILLER. [SEAL.]

STATE OF ILLINOIS, }
 County of Kane, } ss:

I, A. M. Beaupre, clerk county court in and for said county, in the State aforesaid, do hereby certify that Charles A. Miller and May E. Miller, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this 20th day of February, A. D. 1893.

[COURT SEAL.]

A. M. BEAUPRE,
 County Clerk.

No. 1745. Filed for record this 20th day of February, A. D. 1893, at 10:20 o'clock a. m.

JOS. INGHAM, Recorder.

Schedule B to Petition of C. A. Miller.

Certificate for the incorporation of Columbia Straw Paper Company.

This is to certify that we, William C. Heppenheimer, William C. Taylor and Philo D. Beard, all citizens of the United States, do hereby associate ourselves into a corporation under and by virtue of the provisions of an act of the legislature of the State of New Jersey, entitled "An act concerning corporations," approved April 7th, 1875, and the several acts supplementary thereto and amendatory thereof, for the purposes hereinafter mentioned, and to that end we do by this our certificate set forth:

First. The name which we have assumed by which to designate such company and to be used in its business and dealings is "Columbia Straw Paper Company."

Second. The place in this State where the business of the company is to be conducted is the city of Hoboken, in the county of Hudson where the principal part of the business of the company within this State is to be transacted; and the places out of this State where the business of the company is to be conducted and where the company proposes to carry on operations are, in all the States and Territories of the United States and in foreign countries wherever the product of the company can be most advantageously manufactured, purchased or sold, or wherever the company may desire to carry on any such business.

The portion of the business of the company which is to be conducted out of the State of New Jersey will consist of the manufacture, purchase and sale of any and all the products of the company, and all such other business transactions as it may be authorized to conduct out of the State of New Jersey.

The principal office or place of business of the company out of the State of New Jersey shall be located in the city of Buffalo in the State of New York, but the principal office may be changed from time to time in accordance with the provisions contained in its by-laws with respect to such change, or if no provisions be therein contained then the principal office of the company outside the State of New Jersey may from time to time be changed as the directors of the company may determine.

309 *Third.* The objects for which the company is organized are as follows:

1. For the manufacture, purchase, sale and exchange of straw wrapping paper, rag wrapping paper, express paper of all grades and descriptions, manilla wrapping paper, whether made from wood pulp, jute or any other kind of hard stock, or from any combination of these or any other articles which may now be in use in the manufacture of paper or may hereafter be desirable for use for any such purposes.

2. For the manufacture, purchase, sale and exchange of straw

and wood pulp boards, binder boards, building papers, roofing felts and papers, carpet felts and linings, straw-board lumber, wood pulp, straw pulp, or any other product which is now in use or may hereafter be desirable for use or in connection with the manufacture of any of the above-designated articles or of articles of a like character.

3. For the manufacture, purchase, sale and exchange of each and every grade and character of paper that now is or may hereafter become the subject of manufacture, including news prints, poster papers, book papers, writing papers, bond and ledger papers, blotting papers, paraffine papers, the intent hereof being however not to exclude by reason of the above enumeration the right to the company to manufacture, buy, sell, deal in or exchange any character of paper whatsoever; the company hereby expressly reserving the right generally to manufacture, buy, sell, exchange or deal in any commodity of like character now known or that may hereafter become known.

4. For the manufacture of, dealing in or contracting for the sale, supply, letting on hire, erection, repair and maintenance and operation of any plant, implement or other thing incidental to or connected with any of the aforesaid objects.

5. To carry on as principals, agents, commission merchants or consignees the whole or any part of the business above specified, and to manufacture, purchase, sell, exchange, deal in and contract for all materials used in the manufacture of each and all of the above-specified articles; and to carry on as such principals, agents, commission merchants or consignees any other business which may be conveniently conducted in conjunction with any of the above matters aforesaid.

6. To apply for, obtain, purchase or otherwise acquire any patents, brevets d'invention, licenses and the like in respect of
310 any inventions which may seem capable of being used for any of the purposes of the company above stated, and to use, exercise, develop, grant licenses in respect of and otherwise turn to account the same.

7. To purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property, rights or privileges suitable or convenient for any purposes of its business, and to erect and construct, make, improve or aid or subscribe towards the construction, making and improvement of mills, factories, storehouses, buildings, roads, docks, piers, wharves, machinery, reservoirs and works of all kinds in so far as the same may be appurtenant to or useful for the conduct of the business of the company as herein specified.

8. To dam rivers and streams, including the storage, transportation and sale of water and water power and privileges, with the right to take rivulets, raceways and lands and erect and maintain dams and raceways, and to lease, mortgage, sell and convey the same or any part thereof.

9. To cause or allow the legal title, estate and interest in any property acquired, established or carried on by the company to remain or be vested or registered in the name of or carried on by any

other company or companies, foreign or domestic, formed or to be formed and either upon trust for or as agents or nominees of the company, or upon any other terms and conditions which the board of directors may consider for the benefit of the company, and to manage the affairs or take over and carry on the business of such company or companies so formed or to be formed, either by acquiring the shares, stocks or other securities thereof or otherwise howsoever, and to exercise all or any of the powers of holders of shares, stocks or securities thereof and to receive and distribute as profits the dividends and interest on such shares, stocks or securities.

10. To acquire and carry on all or any part of the business or property of any company engaged in a business similar to that authorized to be conducted by this company, and to undertake in conjunction therewith any liabilities of any person, firm, association or company possessed of property suitable for any of the purposes of this company, or for carrying on any business which this company is authorized to conduct, and as the consideration for the same to pay cash or to issue shares, stocks or obligations of this company.

311 To purchase, subscribe for or otherwise acquire and to hold the shares, stocks or obligations of any company organized under the laws of this State or of any other State, or of any Territory of the United States, or of any foreign country, except moneyed corporations, and to sell or exchange the same, or upon a distribution of assets or division of profits to distribute any such shares, stocks or obligations or the proceeds thereof amongst the stockholders of this company.

12. To borrow or raise money for any purpose of the company, to secure the same and interest, or for any other purpose to mortgage or charge the undertaking or all or any part of the property present or after acquired, subject to the limitations herein prescribed, and to create, issue, make, draw, accept and negotiate debentures or debenture stock, bills of exchange, promissory notes or other obligations or negotiable instruments.

13. To guarantee the payment of dividends or interest on any shares, stocks, debentures or other securities issued by, or any other contract or obligation of, any corporation whenever proper or necessary for the business of the company, and provided the required authority be first obtained for that purpose.

14. To sell, let, develop, dispose of or otherwise deal with the franchise or undertakings or all or any part of the property of the company upon any terms, with power to accept as the consideration any shares, stocks or other obligations of any other company.

15. To carry out all or any part of the foregoing objects as principals or agents or in conjunction with any other person, firm, association or company, and in any part of the world.

16. To do all such other things as are incidental or conducive to the attainment of the above object.

Fourth. The total amount of the capital stock of the company shall be four million dollars (\$4,000,000), divided into one million dollars (\$1,000,000) of preferred stock, consisting of ten thousand (10,000) shares of the par value of one hundred dollars per share

and three million dollars (\$3,000,000) of common or general stock, consisting of thirty thousand (30,000) shares of the par value of one hundred dollars per share.

The holders of the preferred stock shall be entitled to receive and the company shall be bound to pay thereon a fixed yearly dividend of eight per cent. per annum, payable quarterly, before any dividend shall be set apart or paid on the common or general

312 stock, payable out of the profits of the company when earned, but such dividend shall be cumulative so that if the same be not earned or paid in any one year, the amount remaining unpaid shall be paid and discharged from the profits of the next succeeding year in which such profits shall be earned.

The company shall have power to create and issue certificates for preferred stock, by the votes of a majority of its board of directors without the previous approval of any meeting of the general stockholders.

The preferred stock may be made and issued subject to redemption at par at the option of the company at any time after the first day of January, 1903, and the first day of January, 1903, is hereby fixed as the time at which the company may at its option redeem such preferred stock at par. The preferred stock shall have no voting power.

Each holder of one share of the common or general stock shall be entitled to one vote for each share of the common or general stock of the company held by him or her, and the entire voting power of the company shall be vested in the holders of the common or general stock.

Fifth. The names and residences of the stockholders and the number of shares held by each, are as follows: William C. Heppenheimer, residing in the city of Hoboken, county of Hudson, and State of New Jersey, four shares; William C. Taylor, residing in the township of New Utrecht, county of Kings and State of New York, four shares; Philo D. Beard, residing in the city of Buffalo, county of Erie and State of New York, four shares.

Sixth. The period at which the company shall commence is the fifth day of December, 1892, and the period at which it shall terminate is the fourth day of December, 1942.

Seventh. The company will commence business with ten thousand (10,000) shares of preferred stock of the par value of one million dollars (\$1,000,000), being its entire authorized issue of preferred stock, and with twenty-nine thousand nine hundred and eighty-eight (29,988) shares of common or general stock of the par value of two million nine hundred and ninety-eight thousand eight hundred dollars (\$2,998,800), and with twelve hundred dollars (\$1,200) in cash, being the proceeds of the sale of the remaining twelve shares of the common or general stock of the company.

313 In witness whereof, we have hereto set our hands and seals, this second day of December, in the year one thousand eight hundred and ninety-two.

WILLIAM C. HEPPENHEIMER.	[L. S.]
WILLIAM C. TAYLOR.	[L. S.]
PHILO D. BEARD.	[L. S.]

STATE OF NEW YORK, }
 City and County of New York, } ss.:

Be it remembered that on this second day of December, in the year one thousand eight hundred and ninety-two, before me, John A. Hillery, a commissioner of deeds for the State of New Jersey, personally appeared William C. Heppenheimer, William C. Taylor and Philo D. Beard, who I am satisfied are the persons named in and who executed the foregoing certificate, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

Witness my hand and official seal the day and year first above written.

JNO. A. HILLERY,
 [SEAL.] A Commissioner of Deeds for the State of
 New Jersey, at No. 56 Wall St., N. Y. City.

(Endorsed:) "Received in the Hudson Co., N. J., clerk's office Dec. 3d, A. D. 1892, and recorded in Clerk's Record No. 18 on page —. Dennis McLaughlin, clerk."

(Endorsed:) "Filed Dec. 6, 1892. Henry C. Kelsey, secretary of state."

(Endorsed:) Filed January 10, 1896. S. W. Burnham, clerk.

314 Afterwards, to wit: on the thirteenth day of January, 1896, in the December term of said court, 1895, in the record of proceedings thereof in said entitled cause before the Hon. John W. Showalter, circuit judge, appears the following entry, to wit:

Order on Motion to Strike Cross-bill of Dickerman from Files.

Entry.

NORTHERN TRUST COMPANY ET AL. }
 vs. } In Chancery. 23614.
 COLUMBIA STRAW PAPER COMPANY ET AL. }

Now come the parties by their solicitors. Now comes on to be heard the complainants' motion to strike the cross-bill of Harry W. Dickerman from the files. The court, after hearing the arguments of counsel takes the matter under advisement.

Afterwards to wit: on the twenty-first day of January, 1896, in the December term of said court, 1895, in the record of proceedings thereof in said entitled cause before the Hon. John W. Showalter, circuit judge, appears the following entry, to wit:

Order Sustaining Motion.

Entry.

NORTHERN TRUST COMPANY ET AL. }
 vs. } In Chancery. 23614.
 COLUMBIA STRAW PAPER COMPANY. }

Now come the parties by their solicitors, and now comes on to be heard the motion of complainant- to strike the cross-bill of Dickerman *et al.* from the files. The court after hearing the arguments of counsel to conclusion and being now fully advised in the premises, sustains said motion.

315 Afterwards, to wit: on the twenty-third day of January, 1896, in the December term of said court, 1895, in the record of proceedings thereof in said entitled cause before the Hon. John W. Showalter, circuit judge, appears the following entry, to wit:

Order on Motion of Dickerman et al.

Entry.

NORTHERN TRUST COMPANY }
 vs. } In Chancery. 23614.
 COLUMBIA STRAW PAPER COMPANY. }

Now come the parties by their solicitors. It is ordered by the court that the motion of Dickerman *et al.* be entered and continued.

Afterwards, to wit: on the third day of February, 1896, in the December term of said court, 1895, in the record of proceedings thereof in said entitled cause before the Hon. John W. Showalter, circuit judge, appears the following entry, to wit:

Order on Petition of C. A. Miller.

NORTHERN TRUST COMPANY ET AL. }
 vs. } In Chancery. 23614.
 COLUMBIA STRAW PAPER COMPANY. }

Now come the parties by their solicitors. Now comes on to be heard the motion of Charles A. Miller to be made party defendant herein. The court, after hearing the arguments of counsel in part, postpones the further hearing of this matter.

316 Afterwards, to wit: on the ninth day of February, 1896, came Harry W. Dickerman *et al.* by their solicitors and filed in the clerk's office of said court their amended answer, which said amended answer is in words and figures following, to wit:

Amended Answer of Dickerman et al.

UNITED STATES OF AMERICA, }
 Northern District of Illinois. }

In the Circuit Court of the United States.

THE NORTHERN TRUST COMPANY and OVID B. Jameson, Trustee-,	} 26614-832.
vs.	
COLUMBIA STRAW PAPER COMPANY.	

And now come the defendants, Harry W. Dickerman, as trustee of the Second National Bank of Rockford, Illinois; F. J. Diem, E. P. Hooker, trustee of the Merchants' National Bank of Defiance, Ohio, and in his own behalf and James C. Richardson, and by leave of court amend their answer originally filed in this cause, as follows, viz: At the end of the twenty-seventh (27th) line from the top of the twenty-second (22d) page of said answer, and immediately preceding the last paragraph on said page, insert the following:

And these defendants further show unto your honors that in the year A. D. 1892, before the combination hereinafter mentioned and described was formed, as hereinafter set forth, there existed and were in operation in the States hereinafter named, sixty-eight (68) distinct and separate paper mills, each of which was owned and operated by distinct and separate individuals, copartnerships and corporations, in addition to which there were two (2) others, owned and operated by same corporation, and each of said sixty-eight separate and distinct mills were in competition with each other in the manufacture of straw and rag paper, commonly known as "wrapping paper;" that the said seventy (70) mills had a capacity for manufacture of about three hundred and ninety-four (394) tons per day, requiring a consumption on the part of all of said mills of about eight hundred (800) tons of straw per day; that said mills, as thus owned and operated (except as above stated), were competitors in the business of manufacturing a wrapping paper for the market, and selling the same throughout the

United States, and which wrapping paper was, and is a necessary commodity or article of merchandise in the business and commercial world, entering into the daily life of the people and used largely by grocers, bakers, butchers and other merchants; that the said seventy (70) mills (with the exception of said two) were also competitors in creating a demand for straw throughout the respective territories where said mills are located and operated, and which straw, without such demand, was practically useless and without pecuniary value in many localities throughout the said northern district of Illinois, and throughout the State of Illinois, and the other territories wherein the said mills are located and in operation; that the consumption of such wrapping paper was at the rate of one hundred thousand (100,000) tons annually throughout the United States; that said seventy (70) mills

were located as follows: In the State of Illinois twenty-two (22) mills, in the State of Michigan eleven (11), in the State of Ohio fourteen (14), in the State of Indiana seven (7), in the State of Iowa seven (7), in the State of Nebraska three (3), in the State of West Virginia two (2), in the State of Missouri one (1), in the State of Kansas one (1), in the State of Minnesota one (1), and in the State of Wisconsin one (1).

And these defendants further show unto your honors that during the early part of the year 1892, a combination was formed by a number of persons for the purpose of bringing all, or as many as possible of said paper mills and the plant, machinery and property connected with them respectively, under one ownership, management and control, by placing the title and ownership in one corporation to be formed for that purpose, to the end that such management and control should be able to, by limiting the manufacture of paper, increase or decrease at the will of those in control, the price of such wrapping paper as merchandise or a commodity, and at the same time control the price of the straw bought for consumption at such mills respectively, and thus fix or regulate the price of wrapping paper as well as the straw used in the manufacture thereof, and also to fix or limit the amount of quantity of such wrapping paper to be manufactured, both in the State of Illinois and in said other States hereinabove named, and to restrain the trade or commerce in said wrapping paper throughout the United States; that for the purpose of carrying out said plan or scheme, the parties to such combination procured option contracts on as many of said paper mills, and the respective properties connected therewith as they were able to do, and that afterwards, having procured option contracts for the purchase of a great number of said mills, and the plants and properties respectively connected therewith, and on substantially all the mills in operation in the

States of Illinois, Wisconsin, Indiana, Michigan, Ohio, Iowa,
318 Nebraska, Missouri, and Kansas, which the persons engineering said combination considered of value for the purposes of their proposed monopoly aforesaid, these options were assigned to one Emanuel Stein, who was one of said parties to said combination; that thereupon the parties to said combination proceeded to and did incorporate the above-named defendant corporation, The Columbia Straw Paper Company in the State of New Jersey, designating the city of Hoboken, in the county of Hudson in said State, as the place in said State where the business of the company was to be conducted; that the places outside of New Jersey where the business of said company was to be carried on, were designated as all the States and Territories of the United States, and these defendants annex hereto and make a part hereof, marked Schedule A, a copy of the papers and certificate for the incorporation of said Columbia Straw Paper Company.

And these defendants further show unto your honors, that the total amount of the capital stock of the said company was fixed at four million dollars (\$4,000,000), divided into one million (\$1,000,000), of preferred stock, consisting of ten thousand (10,000) shares of the

par value of one hundred dollars (\$100) per share, and three million dollars (\$3,000,000) of common or general stock, consisting of thirty thousand (30,000) shares of the par value of one hundred dollars (\$100) per share, and that it was understood that said company would commence business with ten thousand (10,000) shares of preferred stock of the par value of one million dollars (\$1,000,000), and with twenty nine thousand nine hundred and eighty-eight (29,988) shares of common or general stock of the par value of two million nine hundred and ninety-eight thousand eight hundred dollars (\$2,998,800) and with twelve hundred dollars (\$1,200) in cash, being the proceeds of the sale of twelve (12) shares of the common or general stock of the company; that on the sixth day of December, 1892, the only capital or property which said company had (outside of its own shares of capital stock thereafter to be sold and issued), was the sum of twelve hundred dollars (\$1,200) in cash. That the same financial condition with reference to said company continued until the fourteenth day of December, 1892, when, at the alleged meeting of the stockholders of said company, set out in Exhibit A of the bill for foreclosure herein, it was resolved to authorize the execution of the mortgage sought to be foreclosed herein, a copy of which mortgage is annexed to the original bill of complaint herein as Exhibit A. That the same financial condition of the company continued to exist until after the deeds of the various properties were executed and delivered to said company by the same Emanuel Stein, and the mortgage sought to be foreclosed in the above-entitled cause was executed and delivered.

These defendants further show unto your honors that on the said fourteenth day of December, 1892, when said pretended stockholders' meeting was held in the said city of Hoboken, New Jersey, as set forth in said Exhibit A to the bill of complaint herein, ann said Emanuel Stein, as the agent or instrument of said combination, held nothing more than option contracts for the purchase by him or his assignees of various paper mills with the plant, property and machinery belonging to each of them, respectively, upon which option contracts he had not paid one dollar of the purchase price. That of the twenty-two (22) mills in Illinois he held option contracts for the purchase of nineteen (19); of the fourteen (14) paper mills in Ohio he held option contracts for the purchase of nine (9); of the eleven (11) in Michigan he held option contracts for the purchase of two (2); of the seven (7) in Indiana he held option contracts for the purchase of three (3); of the seven (7) mills located in Iowa he held option contracts for the purchase of three (3), and also held option contracts for the purchase of the one (1) mill in Wisconsin, one (1) out of the three (3) mills in Nebraska, the one (1) mill in Missouri and the one (1) in Kansas, so that altogether out of the seventy (70) mills in all of said nine States, he held option contracts for the purchase of forty (40) mills, with all the respective plants, machinery, good will, property, appliances thereof located in said States.

And these defendants further show unto your honors, that said

territory embraced in said nine States was practically the only territory in the United States of America wherein the business of manufacturing straw and rag wrapping paper, commonly known as wrapping paper could be conducted and carried on at a profit on account of the ability of the manufacturers of said paper to obtain the proper kind of straw at such prices as could be offered for the economical and proper manufacture of wrapping paper. That throughout the said territory wheat and rye straw, which are the articles chiefly entering into such manufacture, could and can be had in great quantities, and the immediate vicinity where said mills are respectively located, and at a small price, because such use for straw as a commodity was and is practically the main and important use to which wheat and rye straw was and have been applied. Whilst in the other portions of the United States, east and south, the production of wheat and rye straw is so limited in amount that the supply is inadequate for the manufacture of wrapping paper, and is brought in competition with other demands therefor, to an extent which has made it impracticable to conduct and carry on profitably the manufacture of wrapping paper in these last-mentioned States and localities.

These defendants further show unto your honors, that the said forty (40) paper mills — which said Stein held option contracts were substantially all the mills which said combination desired to have, or which were or would be in a substantial sense competitors in the manufacture and sale of wrapping paper in the United States of America, there being only five other mills within said territory which could in any way be regarded as competitors in the manufacture of wrapping paper, the remaining twenty-five (25) of the seventy (70) above-mentioned paper companies being of small capacity and in dilapidated condition and unfit for use.

The defendants further show unto your honors, that on said fourteenth day of December, 1892, when the said stockholders of said company pretended to authorize the execution of said mortgage for one million dollars (\$1,000,000) and to direct that the one million dollars (\$1,000,000) of bonds to be secured thereby should be delivered to the said Stein, and that the eighteen hundred dollars (\$1,800) in cash be paid to him and the one million dollars (\$1,000,000) of preferred stock and the two million nine hundred and ninety-eight thousand two hundred dollars (\$2,998,200) par value of common or general stock should be delivered to him in payment for said paper mills and the plants, machinery, appliances, property and good will connected with each of them, respectively, the said Stein did not have the title to, nor own any of, the said paper mills or any of said property, plants, appliances, or good will, but simply to option contracts made with the owners thereof for the purchase of the same.

And these defendants further show unto your honors, that the deeds for the said respective forty (40) paper mills and the plants, machinery, appliances, good will and property connected with each of them, respectively, were made by the various owners thereof to the said Emanuel Stein at different times in the year 1893, and that

the persons engineering said combination or scheme (and who at the same time had control of said corporation and for whom the said Stein was the agent and instrument, being without pecuniary means of his own) advanced the means necessary to make the cash payments to the various persons with whom the said Stein held option contracts for the purchase of their respective paper mills, plants, &c. That the agreed contract price for all said forty (40) mills with the respective owners thereof, was as follows:

321	In cash, the sum of.....	766,000
	In preferred stock, the sum of.....	629,000
	In common stock, the sum of.....	1,258,000
	Making a total of.....	\$2,653,000

That up to the time when the pretended contract for the purchase of said option contracts and the properties represented thereby was pretended to be entered into by said company with said Stein, the said Stein had not paid out one dollar to the respective owners of said paper mills, and all that he had invested or all that the combination had invested therein, was simply their expenses in promoting the said scheme.

And these defendants show, that whilst the total consideration to be paid in the aggregate to the respective owners of said paper mills, by said combination, through its said agent and instrument, Emanuel Stein, in cash and preferred and common stock was the sum of two millions six hundred and fifty-three thousand dollars (\$2,653,000), they caused the said corporation to make the purchase of the same from the said Stein, for the sum of five million dollars (\$5,000,000) in bonds, cash and preferred and common stock, or in other words, in securities and money, representing over two million three hundred and forty-seven thousand dollars (\$2,347,000) more than the said Stein had agreed to pay and ultimately did pay for said paper mills, and this before the said Stein had ever paid out one dollar therefor.

And these defendants further show unto your honors that the men who owned the option contracts held for them by said Emanuel Stein as their agent and instrument, were the same persons who caused the said Columbia Straw Paper Company to be incorporated, and then caused certain of their number to subscribe as stockholders for said company and then filled its board of directors with their agents, who in authorizing the said contract between said company and said Stein to be entered into and said mortgage to be made and said bonds secured thereby to be executed and delivered were acting as willing agents and instruments of their principals and employers; that holding and owning contracts in the name of said Stein for the purchase of said forty (40) paper mills, calling for a total purchase price of two million six hundred and fifty-three thousand dollars (\$2,653,000) and no more, they caused the said corporation, also absolutely controlled by them, to purchase said paper mills for a total purchase price of five million dollars (\$5,000,000)

and that in carrying out and perfecting their proposed monopoly and trust in the manufacture and sale of wrapping paper throughout the United States, by having the control of all of said forty (40) paper mills vested in a common board of trustees, they chose to accomplish those ends by using said corporation as the instrument in strict accordance with their purpose and intention at the time the said combination was entered into; that the principal parties to said combination were Philo D. Beard and associates of Buffalo, New York, Rudolph Guggenheimer, Isaac Untermeyer, Morris Untermeyer, Moses Weinman and Samuel Untermeyer of New York, composing the firm of Guggenheimer and Untermeyer and their associates; that in so far as any person or persons composing the board of directors and officers of said company were not principals in said combination, they were willing agents and obedient instruments of the latter.

And these defendants are advised by their counsel, believe and charge the same to be true, that under the facts hereinbefore set forth, together with the facts stated in the said mortgage sought to be foreclosed, and in the schedules forming part of said mortgage, and which were recorded therewith, that said combination was and is a trust or combination in restraint of trade, and constitutes a monopoly not only at common law, but was and is in direct violation of an express enactment of the Congress of the United States, entitled "An act to protect trade and commerce against unlawful restraint and monopolies," approved July 2d, A. D. 1890. And that the same was and is a violation of an act of the General Assembly of the State of Illinois entitled, "An act to provide for the punishment of persons, copartnerships or corporations forming trusts, *bills* and combines and mode of procedure and rules of evidence in such cases." Approved June 11, 1891. In force July 1, 1891. That *that* the procuring of said option contracts, the incorporation of said Columbia Straw Paper Company, the contract between said company and said Emanuel Stein referred to in said mortgage, the execution of said pretended mortgage and bonds, and the delivery of the latter, the pretended acquirement of title, ownership and control by said company through said Stein to said forty (40) paper mills, were each and every a necessary and material part to the consummation of said scheme and combination to restrain the trade and commerce in wrapping paper throughout the United States, to form all said paper mills into a combination to regulate or fix the price of the commodity or merchandise known as wrapping paper, to be manufactured in said State of Illinois and elsewhere in said other eight States of Indiana, Ohio, Michigan, Wisconsin, Iowa, Nebraska, Kansas and Missouri, and that the said mortgage and bonds were and are
 323 illegal and void, not only at the common law, but under and by virtue of the statutes of the United States, and also of the State of Illinois.

These defendants are informed, believe and charge the same to be true, that all the said bonds were, as hereinafter set forth, and in accordance with the resolution of the stockholders and the board of directors of said company, nominally sold and delivered to said

Stein in part payment for the said option contracts and the properties represented thereby, but were by the said Stein under the direction of the persons above mentioned, having the control and management of the said combination, transferred and delivered to various other persons, most of whom were either active members of the combination of their associates in the syndicate formed for the purpose of carrying said combination through to a consummation, and that the other persons now belonging to said combination, or associated with its promoters and managers in the syndicate, had full knowledge that the purpose of said combination and the object of said incorporation of said Columbia Straw Paper Company was to obtain a monopoly and control of the manufacture and sale of wrapping paper throughout the United States of America.

And these defendants are further advised by their counsel, believe and charge the same to be true, that under the facts hereinabove stated, and the facts contained in said mortgage sought to be foreclosed in the above-entitled case, and in the schedules attached to and recorded with said mortgage, no person could become the owner and holder of said bonds in good faith and without notice of the facts hereinabove set forth, so as to cut off the equities of the said corporation and those interested therein, to defend against the said mortgage on the ground as hereinabove stated and set forth; that the same was and is illegal and void, and that the said mortgagee was and is under a rule of property *proving* in the said State of Illinois, a chose in action and upon the said attempt to foreclose said mortgage, the mortgagees and the beneficiaries thereunder (being the holders and owners of the said bonds secured thereby) hold and own the said bonds and the said mortgage, subject to any and all equities.

And these defendants further represent that they are informed, believe and so charge the fact to be, that after the said combination, through the instrumentality of said corporation, obtained the control of said forty (40) paper mills, with the machinery, property and plants belonging thereto, respectively, they dismantled
 324 four of said mills, closed down and ceased to operate seventeen (17), in addition to which three (3) of them have been burnt up.

And these defendants are further advised by their counsel, and believe and charge the same to be true, that under the terms of said mortgage and the original bill of complaint filed herein to foreclose the same, and the testimony taken by the plaintiffs before Henry W. Bishop, Esquire, the master of this court to whom the original case was referred, the principal of said bonds is not legally due, and no foreclosure can legally be had of said mortgage for the payment of the principal of said bonds under the original bill in this suit.

(Endorsed :) Filed Feb'y 9, 1896. S. W. Burnham, clerk.

Afterwards, to wit, on the 13th day of February, 1896, in the December term of said court, 1895, in the record of proceedings

thereof in said entitled cause, before the Hon. John W. Showalter circuit judge, appears the following entry, to wit:

Order on Petition of C. A. Miller.

Entry.

NORTHERN TRUST COMPANY
vs.
COLUMBIA STRAW PAPER COMPANY. } In Chancery. 23614.

Now come the parties by their solicitors. Now comes on to be heard the petition of Charles A. Miller to be made a party hereto. The court, after hearing the arguments of counsel in part, postpones the further hearing of this matter until Saturday next, at 10 a. m.

325 Afterwards, to wit: on the fifteenth day of February, 1896, in the December term of said court, 1895, in the record of proceedings thereof, in said entitled cause, before the Hon. John W. Showalter, circuit judge, appears the following entry, to wit:

Entry.

NORTHERN TRUST COMPANY
vs.
COLUMBIA STRAW PAPER COMPANY. } In Chancery. 23614.

Now come the parties by their solicitors. Now comes on for further argument the motion of Charles A. Miller to become a party hereto. The court, after hearing the arguments of counsel in full, takes the matter under advisement.

Afterwards, to wit: on the fourth day of March, 1896, in the December term of said court, 1895, in the record of proceedings thereof in said entitled cause, before the Hon. John W. Showalter, circuit judge, appears the following entry, to wit:

Order Denying Petition of C. A. Miller.

Entry.

NORTHERN TRUST COMPANY
vs.
COLUMBIA STRAW PAPER COMPANY. } In Chancery. 23614.

The court being now fully advised in the premises, it is ordered that the motion on the petition of Charles A. Miller to become a party defendant herein and to plead, answer or demur, be, and the same is hereby denied.

It is ordered that the motion of defendants, Harry W. Dickerman *et al.*, to amend their answer heretofore filed herein, be, and the same is hereby, denied. It is ordered that the motion of complain-

ant to strike out the answer of defendants, Harry W. Dickerman *et al.*, heretofore filed herein, be, and the same is hereby, denied. It is ordered that the motion of Harry W. Dickerman *et al.* to extend time to take evidence on their answer, be, and the same is hereby, denied. It is ordered that the motion to vacate order dismissing the cross-bill of Harry W. Dickerman *et al.*, heretofore filed herein, be, and the same is hereby, denied.

326 Afterwards, to wit, on the fifteenth day of April, 1896, came Henry W. Bishop, master in chancery, to whom said cause had been referred, to take proofs and report his conclusions thereon, and files his report; which said report is in the words and figures following, to wit:

Master's Report.

UNITED STATES OF AMERICA,)
Northern District of Illinois, Northern Division. }

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and OVID B. Jameson, as Trustees, Complainants,	} Bill to Foreclose Mortgage. Gen. No., 23614.
vs.	
COLUMBIA STRAW PAPER COMPANY, Defendant.	

Master's report.

To the Hon. John W. Showalter, judge:

In pursuance of an order of the court entered in the above-entitled cause, by which the same was referred to me as master in chancery, upon the issues made up in the original cause, to take further testimony therein and report the same to this court, with my conclusions upon the testimony heretofore taken, and that to be taken, I hereby report:

That having given notice to the parties interested that a hearing for the purposes in said order expressed would be had before me on Friday, the 27th day of December, A. D. 1895, I was upon that day and days subsequent thereto, as will appear from the testimony herewith reported, attended by Mr. Dupee on behalf of complainant, by Mr. Allen on behalf of said defendants, and by Mr. Gresham and Mr. Sherwood on behalf of certain other defendants, when the testimony of Byron L. Smith, Arthur Heurtley, Emanuel Stein,
327 John B. Sherwood, Charles A. Dupee, Charles L. Allen, Frank P. Leffingwell, John D. Hood, and Henry M. Wolf was taken and is herewith reported, together with the testimony which had previously been taken in this cause, together with the exhibits in connection therewith. I have also heard the suggestions of counsel at length.

Upon consideration and examination of all of which I report :

That in the testimony taken before and that subsequently taken, I find no reason for changing the report in this cause, which was filed by me on the 21st day of December, A. D. 1895, and the conclusions therein expressed, and I therefore again find and report :

That the material allegations in the original bill in this cause are sustained by the proofs.

That on or about the 31st day of December, A. D. 1892, the said defendant Columbia Straw Paper Company duly issued and executed under its corporate seal, attested by the signatures of its president and secretary, and in the name of said Columbia Straw Paper Company, the one thousand bonds of the denomination of one thousand dollars (\$1,000) each, upon certain terms and subject to certain conditions as to payment referred to in said bonds and in said bill of complaint, payable with interest at the rate of six (6) per cent. per annum from the first day of December, 1892, in half-yearly payments on the first day of June and the first day of December in each year, at the office of the said Columbia Straw Paper Company, in the city of Chicago, as is particularly set forth and described in said bill of complaint, all of which said bonds were duly certified by said The Northern Trust Company, complainant herein as trustee, to be of the issue of the bonds referred to and described in the mortgage or deed of trust hereinafter referred to as executed by the defendant, The Columbia Straw Paper Company.

I find further that all of the issue of said bonds was negotiated and sold and is now outstanding and a valid obligation of the defendant Columbia Straw Paper Company, and that they are the same bonds described in said mortgage or deed of trust, which was duly recorded in the office of the recorder of each county in which any of the parties described in said deed of trust are situated.

I find further that for the purposes of securing the payment of the said one thousand bonds and the interest thereon, the defendant Columbia Straw Paper Company on or about the 31st day of December, A. D. 1892, executed under its corporate seal, duly attested by its president and secretary, a mortgage or deed of trust which
328 was likewise duly executed by the complainants herein, as trustees, and was thereupon duly delivered to said complainants by the defendant Columbia Straw Paper Company, whereby the said defendant Columbia Straw Paper Company granted, bargained, sold, assigned, transferred and conveyed under it, to complainants herein, and their successors in trust thereby created, all of the freehold and leasehold properties described in said bill of complaint and mortgage or trust deed, together with all rights, privileges and appurtenances belonging to or in anywise appertaining to the lands in said bill and mortgage described, or the business conducted by said Columbia Straw Paper Company, and all houses, buildings and structures situated on said freehold properties or connected therewith, or with said business belonging to said Columbia Straw Paper Company, and all the plant, tools, equipment, machinery and chattels, of every name, nature and description, whether fixed or movable, together with all the corporate rights, privileges,

immunities, or franchises, which are used or owned by the said defendant Columbia Straw Paper Company in and about its business, or which might be thereafter acquired by it with the reversion and reversions, remainder and remainders, royalties, issues and profits thereof, and all the estate, right, title, rents and interest, property and possession, claim and demand whatsoever, as well in law as in equity, present and future, of said Columbia Straw Paper Company, and in and to all and singular said property and effects and every part of the same, and every portion thereof, with the appurtenances and all revenues, benefits, advantages and profits to said Columbia Straw Paper Company appertaining thereto, and all the other property, rights, privileges and chattels of every nature and description whatsoever, described in said mortgage or trust deed and particularly set forth in said bill of complaint, and all the property, rights and privileges contained in said mortgage and trust deed are also the same as those described in said original bill of complaint.

I further find that said Columbia Straw Paper Company made default in redeeming or discharging the one hundred (100) bonds, which by the terms of said bonds and of said mortgage or deed of trust were to be paid and redeemed on said day by paying therefor the sum of one hundred and ten thousand dollars (\$110,000) and accrued interest, or any part of said one hundred (100) bonds, that on the first day of December, A. D. 1894, the defendant Columbia Straw Paper Company made default by failing to redeem or discharge the one hundred and five (105) bonds referred to in said mortgage or deed of trust and provided by the terms thereof, and

329 by the provisions of said mortgage or deed of trust, or any part of said one hundred and five (105) bonds, and that the said defendant Columbia Straw Paper Company further made default on said first day of December, A. D. 1893, and on the said first day of December, A. D. 1894, respectively, by failing on each of said dates to pay into the sinking fund referred to in said mortgage or deed of trust for the redemption of said bonds, the sum of one hundred and ten thousand dollars (\$110,000) on each of said dates, together with the interest upon such bonds as had been redeemed on the first day of December, A. D. 1893.

That the said defendant Columbia Straw Paper Company on the first day of June, A. D. 1894, made default in the payment of the interest upon the portion of the said bonds which were then outstanding, to wit, on each and every one thereof.

That thereafter, and on the first day of December, A. D. 1894, the said defendant Columbia Straw Paper Company likewise made default in the payment of the interest upon its said one thousand bonds then outstanding by failing to pay any of the interest which on that date became due and payable upon its said bonds.

That each of said defaults has ever since continued and still continues, and that none of the payments required to be made by the defendant Columbia Straw Paper — as aforesaid, and in which it has defaulted has been made by any other person or corporation, nor has any part thereof been paid, although payment thereof has been duly demanded.

I further find and report that on or about the 22d day of January, A. D. 1895, an execution was duly sued out against the chattels and property of said defendant Columbia Straw Paper Company upon a judgment obtained against said defendant by James Flanagan before George W. Underwood, justice of the peace, Cook county, Illinois, and the said defendant Columbia Straw Paper Company has failed to remove, discharge, or pay such execution, although requested to do so.

I further find that by reason of the premises and as provided in said deed of trust or mortgage, the complainants herein have declared the principal and interest owing upon the said one thousand bonds of the aggregate face value of one million of dollars to be immediately due and payable, and that they have been requested in writing by the owners and holders of more than one-third of said bonds to enforce the provisions of said deed of trust and the security created thereby.

330 I further find that the said defendant, Columbia Straw Paper Company, has been for some time, and is still, insolvent and unable to pay its just debts and liabilities in full.

By reason of all of which I find and report that the bonds and interest thereon, as set forth in said bill of complaint as being due and unpaid, are now due and unpaid, and that there is at the date hereof due upon said bonds for principal and interest, secured by said mortgage or trust deed, the sum of one million two hundred and forty-nine thousand six hundred and thirty-two dollars and eighty-six cents (\$1,249,632.86), which sum still remains unpaid.

I further find and report that the contention of the defendants that before the filing of the bill in this cause the bonds referred to were not issued and outstanding is not supported by the testimony, but I do find that they were issued and were outstanding at that time as set forth in the bill filed in this cause.

I further find that the contention of the defendants that the stock of the company which passed into the hands of Emanuel Stein by virtue of his contract with the company was not fully paid-up stock is not supported by the testimony. But I do find and report that said stock was received by said Stein from said company in fulfillment of his contract with it as fully paid stock, and that as a matter of law any question in regard to it between the stockholders of the company cannot be inquired into in this proceeding.

I further find that the contention of the defendants that the procurement of the Flanagan judgment was the result of a collusion with the company is not supported by the testimony.

I find further from the testimony that there are no creditors of said company except those represented in this proceeding.

The exhibits offered in connection with the testimony before taken and reported by me were returned by me in connection with my

report, which was filed on the 21st day of December, A. D. 1895, and are made by me a part of this report.

All of which is respectfully submitted.

HENRY W. BISHOP,

*Master in Chancery of the Circuit Court of the
United States, Northern District of Illinois,
Northern Division.*

Dated Chicago, April 15, A. D. 1896.

(Endorsed :) Filed Apr. 15, 1896. S. W. Burnham, clerk.

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Defendants' Testimony.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and OVID B. JAMESON, Trustees, Complainants,	} In Chancery. No. 23614.
vs.	
COLUMBIA STRAW PAPER COMPANY ET AL., Defendants.	

Testimony taken on behalf of those defendants in the above-entitled cause who are complainants in the cross-bill filed herein, with the exception of the Buckstaff Manufacturing Company, who have withdrawn, before Henry W. Bishop, master in chancery, Friday, December 27th, A. D. 1895, at eleven o'clock in the forenoon, pursuant to notice.

It is understood and agreed by and between the parties hereto that the following testimony is taken on behalf of said defendants as defendants only to the original bill.

Present: Mr. Dupee, Mr. Allen, Mr. Gresham, Mr. Sherwood, of Indianapolis.

BYRON L. SMITH, called as a witness on behalf of the defendants, being first duly sworn was examined in chief by Mr. Gresham — testified as follows:

Testimony of B. L. Smith.

Q. Please state your full name, Mr. Smith?

A. Byron L. Smith.

Q. You are the president of the Northern Trust Company, the trustee named in the mortgage?

A. I am, that is, in what mortgage?

Q. In the mortgage sought to be foreclosed in this suit.

A. The mortgage of the Columbia Straw Paper Company?

Q. Yes.

A. Yes.

Q. Ovid B. Jameson of Indianapolis is the other trustee. Has your company, Mr. Smith, complied with the statute of Illinois as

regards having a certificate from the auditor of public accounts?

332 A. It has.

Q. And you have a certificate from the auditor?

A. We have.

Q. By whom were the negotiations carried on by which your company became the trustee under the mortgage made by the Columbia Straw Paper Company, the Northern Trust Company and Ovid B. Jameson?

A. I have no positive recollection, but I believe it was through Dupee, Judah and Willard.

Q. Who represented the Northern Trust Company in these negotiations?

A. Well, I presume that I did, but I have no recollection of any particular negotiations.

Q. How was the matter brought up?

A. It is so long ago that I do not remember.

Q. Was there any written communication?

A. Not that I can recollect.

Q. Addressed to your company with reference to becoming trustee under the mortgage?

A. I do not remember any such thing, I do not remember anything about it.

Q. What recollection have you as to how the trust, how the matter was brought up?

A. I have no positive recollection, we have so many trusts all the time, as long as we get the trust—

Q. How is your business usually done, does somebody attend to it verbally?

A. A man may come in and say to us, We are attorneys for the Hartford building and about to execute a mortgage and would like to have you act as trustee.

Q. And do you act as trustee?

A. We satisfy ourselves in some way that the parties are reputable people, and then tell him we will. That is about the long and short of it.

Q. Did Dupee, Judah, Willard & Wolf come to you as representatives of the Columbia Straw Paper Company, in proposing that your company should become the trustee under the mortgage?

A. That I don't remember, I really do not remember anything about the whole transaction.

Q. What do you know about the firm of Guggenheimer & Untermeyer, as figuring in this transaction, if at all?

A. I do not know anything about their figuring in this transaction, I have heard the name frequently mentioned in a general way, I supposed that they were eastern attorneys.

333 Q. For whom?

A. Some of the people.

Q. For organizing the Columbia Straw Paper Company?

A. That I do not know, Mr. Untermeyer I always supposed was a man that took considerable of the bonds.

Q. You understood that they had a separate interest in the—

A. Not as a firm. I understood that he was a bondholder.

Q. Were Dupee, Judah, Willard & Wolf at that time solicitors for the Northern Trust Company?

A. Yes, but more properly Mr. Dupee and Mr. Judah, well, it was that way, but, of course, under the firm name; Mr. Dupee and Mr. Judah always did our business.

Q. You have not a copy of what was called by Mr. Heurtley a temporary certificate for the thousand bonds which was issued to Mr. Stein?

(Objected to by counsel for complainants on the ground that he did not state that there was any such temporary certificate, but stated that there was no such temporary certificate issued by the bank to Mr. Stein.)

Q. It was issued by the Columbia Straw Paper Company and delivered by the Northern Trust Company to Mr. Stein?

A. Well, my attorney objects to the question, shall I decline to answer it?

Mr. DUPEE:

Q. Do you know anything about such a certificate?

A. I do not; I could not say that there was or that there was not, it is so long ago I do not remember it, I would not want to say that there was or was not.

Mr. GRESHAM: Mr. Dupee, could you bring here at some time this afternoon, copies of the papers that we called on you to produce, which you say you have and which we can see, all the orders issued by the Columbia Straw Paper Company and addressed to the trustee requesting the delivery of bonds to various parties? And I would say that you might do this and it would save trouble and save time to just bring the originals right here and we could look at them and read them, and the stenographer could take copies, and you could take the originals back.

Mr. DUPEE: That is satisfactory, you can have them.

Mr. GRESHAM:

Q. Do you recollect, Mr. Smith, anything about the notice which your company served upon the Columbia Straw Paper Company declaring the principal and interest due after the Flanagan judgment was taken, copy of which notice is here presented to you?

A. It don't recall to my mind anything, it was probably a
334 paper which was brought in to me by the attorneys to be signed and I signed it; I signed it, because there is my name to it, but the attorneys attended to the whole thing.

Q. Was there any consultation between you and the attorneys for the company with reference to the possession that the Northern Trust Company should take after the judgment was taken before George W. Underwood, justice of the peace, by James Flanagan on the 22d day of January, 1895, I mean the Northern Trust Company?

A. The Northern Trust Company had more or less conferences with its attorneys, Dupee, Judah, Willard & Wolf; we had a number of conferences, but I do not remember anything in detail about them, or what they were; I remember—the thing I remember most distinctly was how we should take possession of the different mills, and how we should hold them until a receiver was appointed. That was the burden of our talk, because it was a very delicate matter to handle, if we took these mills, the other fellows would jump on them.

Q. Which other fellows?

A. The creditors and so forth, we wanted to get all the mills in at one time, and succeeded in doing it, practically all.

Q. How were these requests of the parties who claimed to hold bonds served upon your company?

A. I do not remember; Mr. Heurtley would know all about that.

Q. Do you know whether any steps were taken to ascertain whether they were the holders of bonds?

A. I do not know anything about it; I suppose the attorneys would do that.

Q. Do you know whether any of the bonds were actually presented to your company at the time the request was made on your company?

A. Not of my own knowledge.

Q. Well, ordinarily when your company is about to proceed to foreclose a mortgage, how do you satisfy yourself that the party who holds the bonds, as in a case of this kind, is the real owner?

(Objected to by counsel for complainants upon the ground that the ordinary practice of the bank is not a matter in dispute here, is not in issue in the case.)

A. We satisfy ourselves that we are dealing with a responsible man, and in some cases we require a deposit of bonds, and sometimes we do not; it depends on the man we are dealing with. If Mr. Bishop comes in and tells us he holds certain bonds, and makes a request, we are pretty certain to act upon it; if a
335 stranger comes in, we do not; depending on the terms of the trust deed always.

Q. Now, where bonds were issued originally to certain parties, say A, B and C, and after a year or two you are requested by D, E and F, to take proceedings to foreclose, in simply a written communication, do you proceed or do you require good proof of this alleged ownership?

(Objected to by counsel for complainants on the ground that the ordinary practice of the bank is not a matter in dispute here, is not an issue in the case.)

A. It depends on who D, E and F are; if the First national bank should write us that they were holders, and held so many of them and wanted us to go ahead, why, we should do so.

Q. Do you know Leopold Hermann, by T. L. Herrman, attorney-in-fact?

- A. I do not recall the name.
- Q. Do you know Charles Schram?
- A. I do not recollect.
- Q. Do you know the estate of Moritz Davidson, by John Benjamin, executor?
- A. I do not recollect.
- Q. Do you know Randolph Guggenheimer?
- A. I know there is a Randolph Guggenheimer in New York.
- Q. Do you know his handwriting?
- A. No.
- Q. Do you know Samuel Untermeyer?
- A. I know there is such a gentleman; I do not know whether I have met him or not.
- Q. Isaac Untermeyer?
- A. I do not.
- Q. Do you know Moses Weinman?
- A. I do not.
- Q. Do you know his handwriting?
- A. No.
- Q. Do you know William C. Heppenheimer?
- A. I do not recollect the gentleman.
- Q. Do you know Otto Huber?
- A. I do not recollect him.
- Q. Do you know Solomon Marx?
- A. I do not recollect him.
- Q. Do you know Adolph Huffel?
- A. I do not recollect him.
- Q. Do you know Emanuel Goldschmidt?
- A. I do not recollect him.
- 336 Q. Do you know James Flanagan?
- A. I do not recollect him.
- Q. Do you know his handwriting?
- A. I do not recollect it.
- Q. Do you know Mary F. Blake, by James Flanagan?
- A. I do not recollect her.
- Q. G. Edwin Jones?
- A. I know him.
- Q. Do you know his handwriting?
- A. I am not positive. I think I do.
- Q. Who is he? Is he the grain man?
- A. He used to be on the board of trade, a son of Daniel A. Jones.
- Q. Now, these are the parties who requested you to proceed to enforce your rights under the mortgage; how were these requests served on your company?
- A. I do not recollect.
- Q. How do you know that they held the bonds which they claimed to have held?
- A. I do not know anything about the entire matter.
- Q. Do you know whether the parties presented their bonds to the Northern Trust Company?
- A. I do not know that.

Q. Who on behalf of your company would probably know?

A. Mr. Heurtley would know all about it.

Q. This request then, after these notices were served, the demand on the Columbia Straw Paper Company and declaration declaring the principal and interest due, were signed by you after a conference with your attorneys, that is, the attorneys for the trust company on your assumption that they knew that everything was all right and it was proper to proceed?

A. In the entire matter, to sum it up, we acted on the advice and direction of our attorneys, that is about the long and short of it.

Q. Did your company have any other attorneys aside from the firm of Dupee and Judah, in reference to the foreclosure of this mortgage?

A. Not that I know of, unless Dupee, Judah & Willard employed some other attorneys.

Q. You said no one else, did you, Mr. Smith?

A. In regard to the foreclosure of this mortgage?

Q. Yes.

A. Yes, I said no one else.

337 Q. Was Mr. Jameson, the other trustee, here at the time that you took these steps in making the demand on the Columbia Straw Paper Company?

A. Yes, he was here, my recollection is they sent for him.

Q. Who sent for him?

A. The attorneys; I have some recollection of Mr. Jameson being in a hurry to go back home, or something of that kind.

Q. When was this conference had that the demand was taken?

A. I do not remember.

Q. By Flanagan?

A. I do not remember; all that it is possible for you to learn is my opinion regarding these questions you are asking about as obtained from Messrs. Dupee, Judah & Willard, and Mr. Heurtley?

Q. Your company, in other words, followed the advice and direction of Dupee and Judah?

A. That is it exactly.

Q. Of course you do not know anything about the default aside from the notice that these letters served on you requesting you to proceed?

(Objected to by counsel for complainant, as leading in form.)

A. Why, I have a sort of general recollection of hearing in the office that the Columbia Straw Paper Company had not met their coupons.

Q. The coupons were not payable at the Northern Trust Company?

A. I do not know.

The WITNESS: I want to state that all my testimony is purely from recollection. I have not attempted to keep back anything from you, but we have a great deal of business; I never expected to have these questions come up and I never charged my mind or made any memorandums, and I want you to so understand it.

Cross-examination by Mr. DUPEE:

Q. Who has the immediate charge of the trust department of the Northern Trust Company?

A. Arthur Heurtley.

Q. And who attends to the details?

A. Arthur Heurtley, with the clerks and men under him.

Q. And you are consulted from time to time when a matter comes up, requiring a consultation?

A. Not on details, on very important questions, usually.

338 Redirect examination by Mr. GRESHAM:

Q. Then, Mr. Heurtley ought to be able to give us all the information with reference to the execution of the mortgage, the issuing and delivery of the certificates?

A. When we get into a matter of this kind, we follow the practice of putting ourselves in the hands of our attorneys, as we would of our doctors, and do as they tell us. The subjects of consultation with Dupee, Judah & Willard were very largely how to get possession of these mills all at one time, so if we took possession of a mill in Wisconsin, some other creditor would not get one in Ohio, and we took a good deal of pains to give time so one mill should not be taken and another not.

Q. What member of the firm of Dupee, Judah & Willard were your consultations mainly with?

A. Mainly with Mr. Dupee, and Mr. Judah, too.

Q. Were they holders of any of these bonds, do you know, at that time?

The WITNESS: Shall I answer that question?

Mr. DUPEE: I do not object.

A. I think Mr. Dupee held some of the bonds; I do not know how many they were. I do not say that he did hold them.

Q. The list of the bondholders, the list of the parties to whom bonds were issued on the order of the Columbia Straw Paper Company by your company, shows Mr. Dupee, Mr. Charles A. Dupee, to be one of the parties; so you understood originally he was a bondholder; did you not?

A. I would not state positively whether I did originally or not.

Q. Do you know whether or not, as a matter of fact that that was during the time you had your conferences with him with reference to taking steps to get possession of the mills and looking to the foreclosure of the mortgage?

(Objected to by counsel for complainants as immaterial.)

A. I think I did.

Q. Do you know whether Mr. Judah, his partner, held any of the bonds at the time?

A. I do not recollect anything of the kind.

Q. How long before you took possession of the—when I say “you” I mean the Northern Trust Company—took possession of

the mills, had you been conferring with the attorneys for the Northern Trust Company with reference to taking possession and proceedings to be had looking to the foreclosure of the mortgage?

A. Some days; I could not state how long.

Signature waived by agreement of counsel.

339 Recess until 2.00 p. m., same day.

2.00 p. m.—Continuation after recess.

Present: Counsel same as before.

ARTHUR HEURTLEY called as a witness on behalf of certain defendants, being first duly sworn, was examined in chief by Mr. Gresham, and testified as follows:

Testimony of Arthur Heurtley.

Q. Now, Mr. Heurtley, in order to get my understanding correct, I understood you, when you were here before, to state that there was a temporary certificate calling for one thousand bonds issued and delivered to Emanuel Stein by the Northern Trust Company?

A. No, sir.

Q. Was there a temporary certificate for one thousand bonds certified to by your company?

A. No, sir.

Q. Was there no certificate for one thousand bonds?

A. No, sir—certified by our company?

Q. Yes.

A. No, sir.

Q. Now, I understood you to testify, of course I may have gotten the information from some other source, that certificates amounting in the aggregate to one thousand bonds, calling for one thousand bonds, were issued and delivered to Emanuel Stein by the Northern Trust Company?

A. No, sir; the bonds themselves were delivered to Emanuel Stein.

Q. The bonds themselves?

A. The bonds themselves.

Mr. DUPEE: By the Northern Trust Company?

The WITNESS: Not by the Northern Trust Company, the Columbia Straw Paper Company.

Mr. GRESHAM: After they were received by the Northern Trust Company?

A. Yes, I so testified here before.

Q. Was there not some temporary certificates, some temporary arrangements of some kind, under which the bonds were placed in Emanuel Stein's hands, or a certificate calling for the bonds in Mr. Stein's hands by the trust company?

A. No, sir.

340 Q. Then if you did so testify, why you were mistaken, or did not wish to be so understood on the former examination?

A. I am quite sure I did not so testify.

Q. I will read you this question. Question and answer on page 29:

"Q. Now the temporary certificate you say, was issued to Emanuel Stein?

A. Yes, sir.

Q. But that the permanent certificates for the bonds attached were issued to these different parties named, Untermeyer, Guggenheimer and so forth.

A. They were the same certificates, only they were split up. Temporary certificates were issued in place of that one for varying amounts.

Q. Well, the one certificate for one thousand bonds was not as a matter of fact issued to Stein?

A. It was issued to Stein.

Q. And delivered to him?

A. And delivered to him."

Q. Is that correct?

A. That is correct.

Q. Then I fail to understand your testimony.

A. Well, you look back, Mr. Gresham, further, on page 21, commencing,

"A. These thirty-three bonds?"

Q. Did the Columbia Straw Paper Company issue or deliver any certificate to Emanuel A. Stein, calling for one thousand bonds?

A. They did.

Q. And delivered it to him?

A. I believe so.

Q. Well then what became of the certificate if you know?

A. You will find it there in the testimony, Mr. Gresham, a little further down.

Q. Can you answer readily?

(Question objected to by counsel for complainant as covering ground already traveled over, with reference to the same thing.)

Q. Do you know how Mr. Stein happened to split this certificate up, or cause it to be split up?

A. I do not.

Q. Do you know of any contract between Mr. Stein and other parties, whereby—

A. I do not.

341 Q. That was a matter between Stein and the Columbia Straw Paper Company, was it?

A. I do not know.

Q. What did the Northern Trust Company have to do with this certificate delivered by the Columbia Straw Paper Company to Stein, calling for one thousand bonds?

A. Nothing.

Q. How do you know that there was such a certificate?

A. I have seen it.

Q. Has the Northern Trust Company a copy of that certificate?

A. They have not.

Q. Under what circumstances did you come to see this certificate?

A. I think I simply happened to see it, that is all, without any special reason for being permitted to do so, as it was nothing that the Northern Trust Company had to do with.

Q. Where did you see it?

A. At the office of Dupee, Judah, Willard & Wolf.

Q. When?

A. I could not give you the exact date.

Q. How long before the bonds were engraved and signed by the Columbia Straw Paper Company and certified to by the Northern Trust Company?

A. It was not before; that I know.

Q. It was afterwards?

A. Yes.

Q. Were Dupee, Judah, Willard & Wolf at that time solicitors for the Columbia Straw Paper Company?

A. I could not say.

Q. Do you know what the arrangement was between Mr. Emanuel Stein and the Columbia Straw Paper Company whereby the company issued split certificates in place of this single certificate?

A. I do not.

Q. Was there any contract between the Northern Trust Company and the Columbia Straw Paper Company whereby the bonds after they were received by the Northern Trust Company and delivered to the Columbia Straw Paper Company were deposited with the Northern Trust Company to be delivered to various parties on the order of the Columbia Straw Paper Company?

A. There was no contract.

Q. Was there any verbal agreement or understanding?

A. They were deposited on a receipt, merely.

342 Q. Any instructions or any notice as to what instructions would be given with reference to the bonds, at the time they were so deposited?

A. The instructions were to pay them out on orders signed by the officers of the company to deliver them.

Q. Who gave the Northern Trust Company these instructions?

A. The Columbia Straw Paper Company.

Q. Who, on behalf of the Columbia Straw Paper Company?

A. I do not remember whether it was the president or the treasurer; it was one of the officers.

Q. Did you require a copy of the resolution of the board of directors of the Columbia Straw Paper Company authorizing the president or the treasurer, as the case might be, to issue instructions to your company to deliver the bonds to the various parties?

A. We did not.

Q. And if there was any such resolution you have no copy of it?

A. No.

Q. Do you know whether or not money passed to the Columbia Straw Paper Company on its delivering the orders to the various parties who presented them to your company?

A. I do not.

Q. Do you know whether there was any contract in existence whereby the Columbia Straw Paper Company arranged with parties to furnish money on delivering the bonds?

A. I do not.

Q. Isn't it a fact that there was a fund deposited with your bank in the name of some party as trustee who was to take up and did take up these bonds?

(Objected to by counsel for complainants as leading.)

Mr. GRESHAM: He is a hostile witness.

Mr. DUPEE: I do not think he is.

A. I do not know.

Q. Was any money deposited in your bank in the name of Henry M. Wolf as trustee, about the time these bonds were being delivered by your company on the orders that you have spoken of from the Columbia Straw Paper Company?

A. I do not know.

Q. Might there have been such a deposit in your bank without you knowing it?

A. Possibly.

Q. Was that a part of the business that you did not have charge of?

A. Not directly.

343 Q. Who has charge of that business?

A. The cashier.

Q. I will ask you to look at that document, Mr. Heurtley, and state what it is?

A. It is a receipt issued by the Northern Trust Company to the Columbia Straw Paper Company.

Mr. DUPEE: The original or a copy?

The WITNESS: A letter-press copy of the original.

Mr. GRESHAM:

Q. In whose handwriting is it?

A. I could not tell you.

Q. Is it signed by you?

A. That is my signature.

Q. But the body of the instrument is not in your handwriting?

A. No, sir.

Q. Do you know whose handwriting it is?

A. I do not.

Mr. GRESHAM: I will read the instrument and it can go in evidence in that shape, and then you can take the original document

CHICAGO, ILLINOIS, April 5, 1893.

Received of Columbia Straw Paper Company one thousand bonds numbered from 1 to 1000, both inclusive, being the same bonds described in a deed of trust from said Columbia Straw Paper Company to the Northern Trust Company and Ovid B. Jameson as trustees, and dated December 31, 1892.

We hereby agree to deliver said bonds in such blocks and at

such times as said Columbia Straw Paper Company may direct, such directions to be signed by either Philo D. Beard, president, or E. Stein, treasurer of said Columbia Straw Paper Company, and to be countersigned in every instance by Dupee, Judah & Willard, attorneys for the Columbia Straw Paper Company.

THE NORTHERN TRUST COMPANY,
By ARTHUR HEURTLEY, *Secretary*.

Q. Now I will ask you again, did any communication come to your company from the Columbia Straw Paper Company at the time these bonds were delivered and on which you delivered to the Columbia Straw Paper Company this contract and receipt?

A. No, sir; not that I know of.

Mr. DUPEE: By "communications" you mean what?

Mr. GRESHAM: Communications in writing.

The WITNESS: No, sir; not that I know of.

344 Q. Who delivered the bonds to your company on behalf of the Columbia Straw Paper Company?

A. That I do not know; I do not remember.

Q. Why was the latter clause inserted, "and to be countersigned in every instance by Dupee, Judah & Willard, attorneys for the Columbia Straw Paper Company"?

A. I do not know.

Q. Now, will you produce the orders that were presented to the Northern Trust Company by the various parties to whom the bonds were delivered?

A. Yes, sir (handing package).

Q. The first order you received to deliver bonds was on April 8th, 1893, was it not (showing document)?

A. I do not know.

Q. I will ask you to look at that and state what it is.

A. This is an order for five bonds.

Q. Now, you may consider this in evidence by reading it to the reporter; please read it.

A. (Witness reads as follows:)

Letters.

Chas. A. Dupee, Noble B. Judah, Monroe L. Willard, Henry M. Wolf.

Law office of Dupee, Judah & Willard, Adams Express bldg.

CHICAGO, ILL., April 5th, 1893.

To the Northern Trust Company:

Please deliver to Mr. E. Stein, on presentation of this certificate, five (5) of the bonds of the Columbia Straw Paper Company this day deposited with you, being serial numbers 1000, 999, 998, 997 and 986.

Truly yours,

COLUMBIA STRAW PAPER COMPANY,

By E. STEIN, *Treasurer*.

Countersigned:

DUPEE, JUDAH & WILLARD,

Attorneys for Columbia Straw Paper Company.

Received the donds.

CHICAGO, April 5th, 1893.

E. STEIN.

345 Q. I will ask you if that is an order (handing document to witness) for bonds delivered to Mr. Samuel Untermyer, on the firm letter-head of Dupee, Judah and Willard.

A. It is.

Q. Please read it.

A. (Witness reads as follows:)

Chas. A. Dupee; Noble B. Judah; Monroe L. Willard; Henry M. Wolf.

Law office of Dupee, Judah & Willard, Adams Express bldg.

CHICAGO, ILLINOIS, April 8, 1893.

To the Northern Trust Company.

GENTLEMEN: Will you please send today by express, addressed to Mr. Samuel Untermyer, No. 46 Wall street, New York city, four hundred and sixty-nine (469) of the bonds of the Columbia Straw Paper Company heretofore deposited with you by said company. In making up such number please include bonds 151 to 657, both inclusive, excepting however, fourteen (14), 200 to 213, inclusive; also excepting thirteen (13) 251 to 263 inclusive; also excepting thirteen (13) 396 to 408, both inclusive; deliver also bonds 666 and 667; which bonds should be sent, charges prepaid, as valuable papers, valuation not given. You will please regard this as your receipt for the 469 bonds.

Yours very truly,

COLUMBIA STRAW PAPER COMPANY,
By E. STEIN, *Treasurer*.

Countersigned by—

DUPEE, JUDAH & WILLARD,
Attorneys for Columbia Straw Paper Co.

Q. I will ask you if that is an order for bonds to be delivered to William A. Starin (handing document to witness).

A. It is.

Q. Please read it.

A. (Witness reads as follows:)

346 Chas. A. Dupee; Noble B. Judah; Monroe L. Willard;
Henry M. Wolf.

Law office of Dupee, Judah & Willard, Adams Express bldg.

CHICAGO, ILL., April 12th, 1893.

To the Northern Trust Company.

GENTLEMEN: Will you please deliver to William A. Starin upon his receipt endorsed hereon, five (5) bonds of the Columbia Straw

Paper Company heretofore deposited with you by the said company, said bonds to be numbers 870, 871, 872, 873 and 874.

Truly yours,

COLUMBIA STRAW PAPER COMPANY,
By E. STEIN, *Treasurer*.

Countersigned by—

DUPEE, JUDAH & WILLARD,

Attorneys for Columbia Straw Paper Company.

That is endorsed: Received the within-numbered bonds, Chicago, April 12th, 1893.

WILLIAM A. STARIN.

Q. This paper purports to be an order to deliver bonds to John D. Hood, is it not?

A. It is.

Q. Please read the order.

A. (Witness reads as follows:)

Chas. A. Dupee; Noble B. Judah; Monroe L. Willard; Henry M. Wolf.

Law office of Dupee, Judah & Willard, Adams Express bldg.

CHICAGO, ILL., April 12, 1893.

To the Northern Trust Company.

GENTLEMEN: Will you please deliver to Mr. John D. Hood, upon the surrender of this order, bonds of the Columbia Straw Paper Company numbered as follows: 900 to 904, both inclusive, 915 to 924, both inclusive; also 658 to 665, both inclusive; also 347 910 to 914, both inclusive, being, in all, twenty-eight (28).

You will please regard this as your receipt for said 28 bonds.

Yours very truly,

COLUMBIA STRAW PAPER COMPANY,
By E. STEIN, *Treasurer*.

Countersigned:

DUPEE, JUDAH & WILLARD,

Attorneys for Columbia Straw Paper Company.

Chicago, April 12th, 1893.—Received the above 28 bonds.

JOHN D. HOOD.

Q. This purports to be an order to deliver to Edwin L. Brown fifteen bonds of the Columbia Straw Paper Company; if so, please read it to the reporter.

A. No letter-head.

CHICAGO, April 13th, 1893.

To the Northern Trust Company.

GENTLEMEN: Will you please deliver to Mr. Edwin L. Brown, upon the surrender of this order, bonds of the Columbia Straw Paper Company numbered 753 to 767, both inclusive, being in all

fifteen bonds. You will please regard this as your receipt for said fifteen bonds.

Yours truly,

COLUMBIA STRAW PAPER COMPANY,
By E. STEIN, *Treasurer*.

Countersigned:

DUPEE, JUDAH & WILLARD,
Attorneys for Columbia Straw Paper Company.

Chicago, April 14th, 1893.—Received the above fifteen bonds.

EDWIN L. BROWN.

Q. This purports to be an order to deliver to Mr. John D. Hood five bonds; if so, please read it to the reporter.

A. (Witness reads as follows:)

348 Chas. A. Dupee; Noble B. Judah; Monroe L. Willard;
Henry M. Wolf.

Law office of Dupee, Judah & Willard, Adams Express bldg.

CHICAGO, ILLINOIS, *May 2, 1893.*

To the Northern Trust Company.

GENTLEMEN: Will you please deliver to Mr. John D. Hood on surrender of this order, five bonds numbered 856, 857, 858, 859 and 860.

Yours truly,

COLUMBIA STRAW PAPER COMPANY,
By E. STEIN, *Treasurer*.

Countersigned:

DUPEE, JUDAH & WILLARD,
Attorneys for Columbia Straw Paper Company.

Received the above five bonds May 2, 1893.

JOHN D. HOOD.

Q. This purports to be an order to deliver to Mr. John D. Hood twelve (12) bonds; if so, please read it to the reporter.

A. (Witness reads as follows:)

Chas. A. Dupee; Noble B. Judah; Monroe L. Willard; Henry M. Wolf.

Law office of Dupee, Judah & Willard, Adams Express bldg.

CHICAGO, ILL., *April 18, 1893.*

To the Northern Trust Company.

GENTLEMEN: Will you please deliver to John D. Hood, upon his receipt endorsed hereon, twelve (12) bonds numbered as follows: 925, 926, 927, 928, 929; also 935 and 936; also 930, 931, 932, 933

and 934, making in all twelve bonds of the Columbia Straw Paper Company.

Truly yours,

COLUMBIA STRAW PAPER COMPANY,
By E. STEIN, *Treasurer*.

Countersigned:

DUPEE, JUDAH & WILLARD,
Attorneys for Columbia Straw Paper Company.

Received the above twelve bonds.

JOHN D. HOOD.

349 Q. This purports to be an order to deliver to Mr. Charles A. Dupee five bonds. Please read it to the reporter.
A. (Witness reads as follows:)

Chas. A. Dupee; Noble B. Judah; Monroe L. Willard; Henry M. Wolf.

Law office of Dupee, Judah & Willard, Adams Express bldg.

CHICAGO, ILLINOIS, April 28, 1895.

To the Northern Trust Company.

GENTLEMEN: Will you please deliver to Mr. Charles A. Dupee, upon his receipt endorsed hereon, five bonds of the Columbia Straw Paper Company heretofore deposited with you, numbered respectively 895, 896, 897, 898 and 899.

Truly yours,

COLUMBIA STRAW PAPER COMPANY,
By E. STEIN, *Treasurer*.

Countersigned:

DUPEE, JUDAH & WILLARD,
Attorneys for Columbia Straw Paper Company.

This bears the endorsement: Charles A. Dupee.

Q. This purports to be an order to deliver to Mr. E. G. Church ten (10) bonds of the Columbia Straw Paper Company; if so, please read it to the reporter.

A. (Witness reads as follows:)

CHICAGO, May 6, 1893.

To the Northern Trust Company.

GENTLEMEN: Please deliver to Mr. E. G. Church, upon his receipt endorsed hereon, ten (10) bonds numbered respectively 801, 802, 803, 804, 805, 806, 807, 808, 809 and 810.

Truly yours,

COLUMBIA STRAW PAPER COMPANY,
By E. STEIN, *Treasurer*.

Countersigned:

DUPEE, JUDAH & WILLARD,
Attorneys for Columbia Straw Paper Company.

Received the above ten bonds.

E. G. CHURCH.

350 Q. This purports to be an order to deliver to D. M. Frees five bonds of the Columbia Straw Paper Company; if so, please read it to the reporter.

A. (Witness reads as follows:)

Chas. A. Dupee; Noble B. Judah; Monroe L. Willard; Henry M. Wolf.

Law office of Dupee, Judah & Willard, Adams Express bldg.

CHICAGO, ILL., April 28, 1893.

To the Northern Trust Company.

GENTLEMEN: Will you please deliver to Mr. D. M. Frees on presentation of this certificate, five (5) bonds of the Columbia Straw Paper Company, heretofore deposited with you, numbered respectively 888, 889, 890, 891, 892.

Yours truly,

COLUMBIA STRAW PAPER COMPANY,
By E. STEIN, *Treasurer*.

Countersigned:

DUPEE, JUDAH & WILLARD,
Attorneys for Columbia Straw Paper Company.

May 10, 1893.—Received the above-mentioned bonds.

D. M. FREES.

Q. This purports to be an order to deliver to Mr. John D. Hood four bonds of the Columbia Straw Paper Company; if so, please read it to the reporter.

A. (Witness reads as follows:)

CHICAGO, May 10th, 1893.

To the Northern Trust Company.

GENTLEMEN: Please deliver to Mr. John D. Hood, upon his receipt endorsed hereon, four bonds numbered respectively, 866, 867, 868 and 869.

Yours truly,

COLUMBIA STRAW PAPER COMPANY,
By E. STEIN, *Treasurer*.

Countersigned:

DUPEE, JUDAH AND WILLARD,
Attorneys for Columbia Straw Paper Company.

Received the above four bonds May 10th, 1893.

JOHN D. HOOD.

351 Q. This purports to be an order to deliver to Mr. B. M. Frees, five bonds of the Columbia Straw Paper Company; if so, please read it to the reporter.

A. (Witness reads as follows:)

CHICAGO, May 12th, 1893.

To the Northern Trust Company.

GENTLEMEN: Will you please deliver to Mr. B. M. Frees upon his receipt endorsed hereon, five (5) bonds of the Columbia Straw Paper Company numbered as follows: 816, 817, 818, 819 and 820.

Yours truly,

COLUMBIA STRAW PAPER COMPANY,
By E. STEIF, *Treasurer*.

Countersigned:

DUPEE, JUDAH AND WILLARD,
Attorneys for Columbia Straw Paper Company.

Received the above-named bonds.

B. M. FREES.

Q. This purports to be an order to deliver to Messrs. Hollis & Duncan, thirteen bonds; if so, please read it to the reporter.

A. (Witness reads as follows:)

CHICAGO, ILL., May 13th, 1893.

Northern Trust Company, city.

GENTLEMEN: You will please deliver to Messrs. Hollis & Duncan, upon their receipt endorsed hereon, thirteen bonds of the Columbia Straw Paper Company heretofore deposited with you, numbered 768 to 780, both inclusive.

Yours truly,

COLUMBIA STRAW PAPER COMPANY,
By E. STEIN, *Treasurer*.

Countersigned:

DUPEE, JUDAH & WILLARD,
Attorneys for Columbia Straw Paper Company.

Received the above May 13th, 1893.

HOLLIS & DUNCAN,
By WILLIAM G. HOLLIS,
JOHN A. DUNCAN.

Q. This purports to be an order to deliver to Mr. Philo D. Beard five bonds. If so, please read it to the reporter.

A. (Witness reads as follows:)

352 Chas. A. Dupee; Noble B. Judah; Mouroe L. Willard;
Henry M. Wolf.

Law office of Dupee, Judah & Willard, Adams Express bldg.

CHICAGO, ILL., May 23rd, 1893.

To the Northern Trust Company.

GENTLEMEN: Will you please deliver to Mr. Philo D. Beard, upon his receipt endorsed hereon, five bonds of the Columbia Straw

Paper Company heretofore deposited with you, numbered 937 to 941, both inclusive.

Truly yours,

COLUMBIA STRAW PAPER COMPANY,
By PHILO D. BEARD, *President*.

Countersigned:

DUPEE, JUDAH & WILLARD,

Attorneys for Columbia Straw Paper Company.

May 23rd, 1893.—Received the above five bonds.

PHILO D. BEARD.

Q. This purports to be an order to deliver to Mr. Philo D. Beard one hundred and twenty-four bonds. If so, please read it to the reporter.

A. (Witness reads as follows:)

CHICAGO, ILL., May 26, 1893.

To the Northern Trust Company.

GENTLEMEN: Will you please deliver to Mr. Philo D. Beard, upon his receipt endorsed hereon, one hundred and twenty-four (124) bonds of the Columbia Straw Paper Company heretofore deposited with you, numbered 942 to 995, both inclusive, and 81 to 150, both inclusive.

Truly yours,

COLUMBIA STRAW PAPER COMPANY,
By E. STEIN, *Treasurer*.

Countersigned:

DUPEE, JUDAH & WILLARD,

Attorneys for Columbia Straw Paper Company.

Received May 27th, 1893, of the Northern Trust Company the above-described bonds.

PHILO D. BEARD.

353 Q. This purports to be an order to deliver to Mr. Monroe L. Willard five bonds of the Columbia Straw Paper Company. If so, will you please read it to the reporter?

A. (Witness reads as follows:)

Chas. A. Dupee; Noble D. Judah; Monroe L. Willard; Henry M. Wolf.

Law office of Dupee, Judah & Willard, Adams Express bldg.

CHICAGO, ILLINOIS, April 28, 1893.

Northern Trust Company.

GENTLEMEN: Will you please deliver to Mr. Monroe L. Willard, upon his receipt endorsed hereon five (5) bonds of the Columbia

Straw Paper Company heretofore deposited with you, numbered respectively 905, 906, 907, 908 and 909.

Yours truly,

COLUMBIA STRAW PAPER COMPANY,
By E. STEIN, *Treasurer*.

Countersigned :

DUPEE, JUDAH & WILLARD,
Attorneys for Columbia Straw Paper Company.

Received for Monroe L. Willard the five bonds above mentioned this 27th day of May, 1893.

HENRY L. WOLF.

Q. This purports to be an order to deliver to Mr. Emanuel Stein two bonds of the Columbia Straw Paper Company; if so, please read it to the reporter.

A. (Witness reads as follows:)

354 Chas. A. Dupee; Noble B. Judah; Monroe L. Willard; Henry M. Wolf.

Law office of Dupee, Judah & Willard, Adams Express bldg.

CHICAGO, ILL., *April 21, 1893.*

To the Northern Trust Company.

GENTLEMEN: Will you please deliver to Mr. Emanuel Stein, upon his receipt endorsed hereon, two bonds of the Columbia Straw Paper Company heretofore deposited with you, numbered 893 and 894?

Yours truly,

COLUMBIA STRAW PAPER COMPANY,
By E. STIEN, *Treasurer*.

Countersigned:

DUPEE, JUDAH & WILLARD,
Attorneys for Columbia Straw Paper Company.

June 5, 1893.—Received the above-mentioned two bonds.

E. STEIN.

Q. This purports to be an order to deliver to Mr. John B. Halladay, twenty-five bonds. If so, will you please read it to the reporter?

A. (Witness reads as follows:)

CHICAGO, ILL., *June 10, 1893.*

To the Northern Trust Company.

GENTLEMEN: Please deliver to Mr. John B. Halladay, upon his receipt endorsed hereon, twenty-five (25) bonds of the Columbia

Straw Paper Company numbered respectively 728 to 752, both inclusive.

Yours truly,

COLUMBIA STRAW PAPER COMPANY,
By E. STEIN, *Treasurer*.

Countersigned:

DUPEE, JUDAH & WILLARD,
Attorneys for Columbia Straw Paper Company.

June 10, 1893.—Received from the Northern Trust Company the above-mentioned bonds.

JOHN B. HALLADAY.

355 Q. This purports to be an order to deliver to Mr. F. C. Trebein, thirty bonds; if so, please read it to the reporter.

A. (Witness reads as follows:)

Chas. A. Dupee; Noble B. Judah; Monroe L. Willard; Henry M. Wolf.

Law office of Dupee, Judah & Willard, Adams Express bldg.

CHICAGO, ILL., June 13, 1893.

To the Northern Trust Company.

GENTLEMEN: Please deliver to Mr. F. C. Trebein, upon his receipt endorsed hereon, thirty (30) bonds of the Columbia Straw Paper Company, heretofore deposited with you, numbered respectively from 688 to 717, both inclusive.

Yours truly,

COLUMBIA STRAW PAPER COMPANY,
By E. STEIN, *Treasurer*.

Countersigned:

DUPEE, JUDAH & WILLARD,
Attorneys for Columbia Straw Paper Company.

Chicago, Illinois, June 13, 1893.—Received the above thirty bonds.

F. C. TREBEIN.

Q. This purports to be an order to deliver to John D. Hood, twenty bonds; if so, please read it to the reporter.

A. (Witness reads as follows:)

Chas. A. Dupee; Noble B. Judah; Monroe L. Willard; Henry M. Wolf.

Law office of Dupee, Judah & Willard, Adams Express building.

CHICAGO, ILL., June 15, 1893.

To the Northern Trust Company.

GENTLEMEN: Please deliver to Mr. John D. Hood, upon his receipt endorsed hereon, twenty (20) bonds of the Columbia Straw Paper

Company heretofore deposited with you numbered respectively 831 to 850, both inclusive.

Yours truly,

COLUMBIA STRAW PAPER COMPANY,
By E. STEIN, *Treasurer*.

356

Countersigned :

DUPEE, JUDAH AND WILLARD,
Attorneys for Columbia Straw Paper Company.

Received the above twenty bonds June 16, 1893.

JOHN D. HOOD.

Q. This purports to be an order to deliver to Galusha Emigh five bonds; if so, please read it to the reporter.

A. (Witness reads as follows:)

Chas. A. Dupee; Noble B. Judah; Monroe L. Willard; Henry M Wolf.

Law office of Dupee, Judah & Willard, Adams Express bldg.

CHICAGO, ILL., June 19, 1893.

To the Northern Trust Company.

GENTLEMEN: Will you please deliver to Galusha Emigh, upon his receipt endorsed hereon, five (5) bonds of the Columbia Straw Paper Company heretofore deposited with you, numbered 861 to 865, both inclusive.

Yours truly,

COLUMBIA STRAW PAPER COMPANY,
By E. STEIN, *Treasurer*.

Countersigned :

DUPEE, JUDAH AND WILLARD,
Attorneys for the Columbia Straw Paper Company.

June 19, 1893.—Received the above-mentioned bonds.

GALUSHA EMIGH.

Q. This purports to be an order to deliver to John D. Hood, forty-five bonds of the Columbia Straw Paper Company; if so, please read it to the reporter.

A. (Witness reads as follows:)

357 Chas. A. Dupee; Noble B. Judah; Monroe L. Willard; Henry M. Wolf.

Law office of Dupee, Judah & Willard, Adams Express bldg.

CHICAGO, ILLINOIS, June 16, 1893.

To the Northern Trust Company.

GENTLEMEN: Will you please deliver to Mr. John D. Hood, upon his receipt endorsed hereon, forty-five (45) bonds of the Columbia

Straw Paper Company heretofore deposited with you numbered 36 to 80, both inclusive.

Yours truly,

COLUMBIA STRAW PAPER COMPANY,
By E. STEIN, *Treasurer*.

Countersigned :

DUPEE, JUDAH & WILLARD,
Attorneys for Columbia Straw Paper Company.

Received the above June 16, 1893.

JOHN D. HOOD.

Q. This purports to be an order to deliver to Mr. John D. Hood, thirteen bonds of the Columbia Straw Paper Company. — so, please read to the reporter.

A. (Witness reads as follows:)

CHICAGO, *July 6, 1893.*

To the Northern Trust Company.

GENTLEMEN: Will you please deliver to Mr. John D. Hood, upon his receipt endorsed hereon, thirteen (13) bonds of the Columbia Straw Paper Company heretofore deposited with you, numbered 875 to 887, both inclusive.

Truly yours,

COLUMBIA STRAW PAPER COMPANY,
By E. STEIN, *Treasurer*.

Countersigned :

DUPEE, JUDAH & WILLARD,
Attorneys for Columbia Straw Paper Company.

Received July 16, 1893, the above-mentioned thirteen (13) bonds.

JOHN D. HOOD.

Q. This purports to be an order delivered to Mr. Emanuel Stein, treasurer, ten bonds; if so, please read it to the reporter.

A. (Witness reads as follows:)

358 Chas. A. Dupee; Noble B. Judah; Monroe L. Willard; Henry M. Wolf.

Law office of Dupee, Judah & Willard, Adams Express bldg.

CHICAGO, ILLINOIS, *August 10, 1893.*

To the Northern Trust Company.

GENTLEMEN: Please deliver to E. Stein, treasurer, upon his receipt endorsed hereon, ten (10) bonds of the Columbia Straw Paper Company, heretofore deposited with you, numbered 821 to 830, both inclusive.

Yours truly,

COLUMBIA STRAW PAPER COMPANY,
By E. STEIN, *Treasurer*.

Countersigned :

DUPEE, JUDAH & WILLARD,
Attorneys for Columbia Straw Paper Company.

Received the above-mentioned bonds, August 1, 1893.

E. STEIN, *Treasurer*.

Memorandum on same: "For H. S. Carroll."

Q. This purports to be an order to deliver to Henry B. Uttley ten bonds; if so, please read it to the reporter.

A. (Witness reads as follows:)

Chas. A. Dupee; Noble B. Judah; Monroe L. Willard; Henry M. Wolf.

Law office of Dupee, Judah & Willard, Adams Express bldg.

CHICAGO, ILLINOIS, August 1, 1893.

To the Northern Trust Company.

GENTLEMEN: Please deliver to Henry B. Uttley, upon his receipt endorsed hereon, ten (10) bonds of the Columbia Straw Paper Company heretofore deposited with you, numbered 791 to 800, both inclusive.

Yours truly,

COLUMBIA STRAW PAPER COMPANY,

By E. STEIN, *Treasurer*.

359 Countersigned:

DUPEE, JUDAH & WILLARD,

Attorneys for Columbia Straw Paper Company.

Received the above-mentioned bonds August 1, 1893.

HENRY B. UTTLEY.

Q. This purports to be an order to deliver to Philo B. Beard twenty bonds; if so, please read it to the reporter.

A. (Witness reads as follows:)

Chas. A. Dupee; Noble B. Judah; Monroe L. Willard; Henry M. Wolf.

Law office of Dupee, Judah & Willard, Adams Express bldg.

CHICAGO, ILLINOIS, October 2, 1893.

To the Northern Trust Company.

GENTLEMEN: Please deliver to Mr. Philo B. Beard, upon his receipt endorsed hereon, twenty (20) bonds of the Columbia Straw Paper Company heretofore deposited with you numbered 668 549 to 682, inclusive, and 718 to 722.

Yours truly,

COLUMBIA STRAW PAPER COMPANY,

By E. STEIN, *Treasurer*.

Countersigned:

DUPEE, JUDAH & WILLARD,

Attorneys for Columbia Straw Paper Company.

Received the above twenty bonds for one thousand dollars each this October 2, 1893.

PHILO D. BEARD.

Q. This purports to be an order to deliver to John D. Hood fifty bonds; if so, please read it to the reporter.

A. (Witness reads as follows:)

360 Chas. A. Dupee; Noble B. Judah; Monroe L. Willard; Henry M. Wolf.

Law office of Dupee, Judah & Willard, Adams Express bldg.

CHICAGO, ILLINOIS, *December 29, 1893.*

To the Northern Trust Company.

GENTLEMEN: Please deliver to Mr. John D. Hood, upon his receipt indorsed hereon, fifty (50) bonds of the Columbia Straw Paper Company heretofore deposited with you, numbered 1 to 35, both inclusive; 781 to 790, both inclusive, and 811 to 815, both inclusive.

Yours truly,

COLUMBIA STRAW PAPER COMPANY,
By PHILO D. BEARD, *President.*

Countersigned:

DUPEE, JUDAH & WILLARD,
Attorneys for Columbia Straw Paper Company.

Received the above-mentioned bonds December 29, 1893.

JOHN D. HOOD.

Q. This purports to be an order to deliver five bonds to Eugene H. Dupee; if so, please read it to the reporter.

A. (Witness reads as follows:)

Chas. A. Dupee; Noble B. Judah; Monroe L. Willard; Henry M. Wolf.

Law office of Dupee, Judah & Willard, Adams Express bldg.

CHICAGO, ILLINOIS, *September 20, 1893.*

To the Northern Trust Company.

GENTLEMEN: Please deliver to Mr. Eugene H. Dupee, upon his receipt indorsed hereon, five (5) bonds of the Columbia Straw Paper Company, heretofore deposited with you; said bonds are numbered 723, 724, 725, 726 and 727. You will please regard this as your receipt.

Yours truly,

COLUMBIA STRAW PAPER COMPANY,
By E. STEIN, *Treasurer.*

361 Countersigned:

DUPEE, JUDAH & WILLARD,
Attorneys for Columbia Straw Paper Company.

September 20, 1893.—Received the above-mentioned bonds.

EUGENE H. DUPEE.

Q. This purports to be an order to deliver seventeen bonds to Eugene H. Dupee; if so, please read it to the reporter.

A. (Witness reads as follows:)

Chas. A. Dupee; Noble B. Judah; Monroe L. Willard; Henry M. Wolf.

Law office of Dupee, Judah & Willard, Adams Express bldg.

CHICAGO, ILLINOIS, October 24, 1894.

To the Northern Trust Company.

GENTLEMEN: Please deliver to Eugene H. Dupee, upon his receipt endorsed hereon, seventeen (17) bonds of the Columbia Straw Paper Company heretofore deposited with you, numbered 200 to 213, both inclusive, and 251, 252 and 253, respectively.

Yours truly,

COLUMBIA STRAW PAPER COMPANY,
By E. STEIN, *Treasurer*.

Countersigned:

DUPEE, JUDAH & WILLARD,
Attorneys for Columbia Straw Paper Company.

October 25, 1894.—Received of the Northern Trust Company the above-mentioned bonds.

EUGENE H. DUPEE.

Q. Do you know Mr. John D. Hood?

A. I do.

Q. Where does he reside?

A. I do not know.

Q. Do you know what his business is?

A. Lawyer.

Q. Is he a man of means?

A. I do not know.

Q. Do you know whether he was at the time these bonds were delivered to him?

A. I do not.

Q. Do you know where he practiced law?

A. In the city of Chicago.

362 Q. I suppose he was the agent or attorney for some one to receive these bonds in that capacity, was he not?

A. I do not know.

Q. Do you know whether he is in anywise connected with the firm of Dupee, Judah, Willard & Wolf; that is, whether John D. Hood is?

A. He is not.

Q. Was he at the time of the delivery of these bonds?

A. Yes.

Q. What was he, a clerk in the office?

A. I do not know.

Q. He was not a member of the firm?

A. That I do not know.

Q. I think you said he was in the office of Dupee, Judah, Willard and Wolf at the time these bonds were delivered, did you not?

A. Yes.

Q. How old a man is this Mr. Hood?

A. I do not know.

Q. How old would you judge him to be?

A. Well, if I had to guess, I should say somewhere about thirty years of age.

Q. All this time Dupee, Judah & Willard were the regular retained solicitors for the Northern Trust Company?

A. They were.

Q. Do you know how long prior to the filing of the bill to foreclose the mortgage they ceased to be the attorneys for the Columbia Straw Paper Company?

A. I do not.

Q. Mr. Heurtley, the demand that certain parties purporting to be owners of bonds served on your company authorizing you to, and requesting you to take such steps to protect their interests as bondholders under the mortgage as were deemed advisable, how or what steps did your company take to ascertain whether these parties really held the bonds that they claimed?

A. Under the circumstances it was not necessary for us to make strict proof of that, as it otherwise would have been.

Q. Under what circumstances do you refer to?

A. The fact that the trustee took possession under a provision of the trust deed whereby, when a judgment was taken and execution made and not satisfied, the trustee should do certain things. On page 19 of the trust deed, article IV reads as follows: "In case this security shall have become enforceable, as aforesaid, the trustees may, in their discretion, and they shall, upon the request, in writing, of the holders of one-third of such of the bonds (but, in either case, without any further consent on the part of the company), either personally or by their agent or agents, attorney or attorneys, enter into possession and enjoyment"—and so forth.

Q. That refers to the taking of a judgment?

A. Yes, sir.

Q. Refers to the company permitting a judgment to go against it?

A. Yes, sir.

Q. So that this alleged request to the bondholders was entirely unnecessary so far as the right to proceed, and for that reason you did not make any examination?

A. Yes, sir.

Q. You would, however, have made an examination if your right to proceed had been conditioned solely on the request of the bondholders?

A. Yes, sir.

Q. How was it that the judgment was taken before the justice of the peace so late as this record shows, this record shows it was taken about 5.20 in the afternoon on the 22d of January, that you thought it necessary to serve your man on the same day, on the ground that he had not removed the judgment?

A. The action was taken by the Northern Trust Company under the clause in the trust deed referred to.

Q. Why was it necessary to proceed so expeditiously?

A. Because in the judgment of the company it was deemed necessary.

Q. Of the Northern Trust Company?

A. Yes, sir.

Q. What was the basis for the formation of that opinion by the Northern Trust Company?

A. From the fact that judgment had been made and execution taken.

Q. Well, it was a judgment before a justice of the peace and could easily have been stayed or appealed, could it not?

A. I do not know.

Q. Do you know, as a matter of fact whether the execution was served on the company?

(Objected to by counsel for complainants on the ground that the same question has been put upon the examination of the same witness before and answered, and the ground gone over.)

Q. (Continuing—after referring to transcript of previous testimony). Prior to your declaring the principal and interest of the bonds due and payable?

364 A. My answer to that before was that my recollection is that I saw a transcript of the proceedings in the attorney's office.

Q. Your company did not request the Columbia Straw Paper Company to remove this judgment, did not pay the judgment, before you declared the principal and interest of the bonds due?

A. You asked me that before.

Q. Did I ask you before who prepared the declaration declaring the principal and interest of the bonds due?

A. I think you did, I think you went all over that in the examination in the afternoon.

Q. That was prepared by your attorneys, was it?

A. Presumably yes.

Cross-examination by Mr. DUPEE:

Q. Mr. Heurtley, if I understand you correctly, the Northern Trust Company never issued any certificates of the Columbia Straw Paper Company, and never certified any certificates for it, is that right?

A. That is correct, they did not.

Q. When the Northern Trust Company certified these bonds, as I understand from you they did, what did the Northern Trust Company do with these bonds?

A. They were delivered to the Columbia Straw Paper Company.

Q. Did the Northern Trust Company take from the Columbia Straw Paper Company a receipt therefor?

A. It did.

Q. Look at the paper now shown you, and state if that is the receipt?

A. It is.

Q. Read it in evidence.

A. The receipt reads as follows:

"CHICAGO, ILLINOIS, April 5th, 1893.

"Received of the Northern Trust Company one thousand (1,000) bonds of the Columbia Straw Paper Company, numbered from 1 to 1000, both numbers inclusive, each for the sum of one thousand dollars (\$1,000), all of said bonds being duly certified by certificate of said trust company, as trustee, endorsed thereon, said bonds being of the issue of one thousand bonds mentioned and described in the trust deed of said Columbia Straw Paper Company, dated December 31st, 1892. This delivery of said bonds to said
365 Columbia Straw Paper Company by said trust company, is made under and in pursuance of article I of said trust deed, in which said trust deed said trust company is designated as the Illinois trustee.

"COLUMBIA STRAW PAPER COMPANY,
"By E. STEIN, *Treasurer*."

Q. Then, if I understand you correctly, after the Columbia Straw Paper Company had received these bonds from you, as shown by this certificate, it redelivered them to you and you gave the receipt for them which has been offered in evidence; is that correct?

A. That is correct.

Q. And thereafter you issued the bonds on the various orders of the Columbia Straw Paper Company that have also been read in evidence?

A. We did.

Q. Is that all that the Northern Trust Company had to do with these bonds, so far as you know?

A. Yes, sir.

Signature waived by agreement of counsel.

Adjourned to 11 a. m., Saturday, December 28, 1895.

NORTHERN TRUST COMPANY ET AL. }
vs.
COLUMBIA STRAW PAPER COMPANY. }

SATURDAY, 11 A. M., December 28, A. D. 1895.

Continuation pursuant to adjournment.

Present: Mr. Dupee, Mr. Gresham, Mr. Sherwood, Mr. Allen.

Testimony of Emanuel Stein.

EMANUEL STEIN, called as a witness on behalf of certain defendants, being first duly sworn, was examined in chief by Mr. Gresham, and testified as follows:

Q. Please state your full name?

A. Emanuel Stein.

Q. Where do you reside?

A. Waukegan, Illinois.

Q. How long have you resided at Waukegan, Illinois?

A. About five or six years.

Q. Did you ever reside in the city of New York?

A. No, sir.

366 Q. Where did you reside before you went to Waukegan, Illinois?

A. Philadelphia.

Q. How long have you been engaged in business in and about the city of Chicago?

A. About three years; four years, possibly.

Q. What official position, if any, have you ever held with the Columbia Straw Paper Company?

A. I think I was one of the vice-presidents and treasurer—that is, vice-president for a time, but constantly treasurer for the company.

Q. Were you ever the secretary of the company?

A. No, sir.

Q. Who was the secretary of the company from the time of its formation down to the last of June?

A. Mr. Guggenheimer.

Q. What is his full name?

A. I am not certain whether it is; I think it is Samuel H.; I am not certain as to his full name.

Q. Was he secretary continuously from its organization until last June?

A. That is my recollection; yes, sir.

Q. You were also a director of the corporation?

A. Yes, sir.

Q. The company maintained an office here in Chicago?

A. They did until the time of the assignment—that is, until the time of the receiver.

(Counsel for complainants objects to the introduction of any and all evidence relating to the acts of the corporation, its officers or

agent, or acts of its promoters or other parties prior to its organization, unless coupled with evidence that such acts and doings were known to those who are holders of bonds of the Columbia Straw Paper Company at the time of the filing of the bill in this case.)

Q. Was this the office from which the business of the company was mainly transacted?

A. The current business was transacted entirely from this office.

Q. Who was the president of the company from the time of its organization up to the time the proceedings to foreclose were instituted?

A. Mr. Philo D. Beard.

Q. Did Mr. Beard reside here in Chicago during that time?

A. He was here a great part of the time.

367 Q. Were the books of the company kept here in Chicago at that time?

A. The current books of the company were kept here.

Q. Was the bond book of the company kept here during that time?

A. I think the bond register was in New York or the New Jersey office. I think we had a copy of it here.

Q. Was the stock register kept here, or a copy of it kept here?

A. It was here quite a portion of the time.

Q. Where was the subscription book to stock, the original subscription book, kept?

Mr. DUPEE: If there was any.

Mr. GRESHAM: You can ask your own questions.

Mr. ALLEN: Isn't that proper?

A. I have never seen any.

Q. Where — the meetings mainly held?

A. At the Chicago office of the company.

Q. Were records of these meetings kept?

A. Yes, sir.

Q. Where are those books, if you know?

A. The record books?

Q. Yes.

A. They were sent to the secretary of the company.

Q. In New York?

A. In New York.

Q. This Mr. Guggenheimer resides in New York, or did reside in New York?

A. I don't know where his residence is, his place of business is in New York. I think he is in the office of Guggenheimer, Untermeyer & Marshall.

Q. Now is there a minute book of the meetings of the stockholders of the company?

A. Yes, sir.

Q. Where were the meetings of the stockholders usually held?

A. At the office of the company, Jersey City.

Q. Were any meetings held here in Chicago?

A. Stockholders' meetings?

Q. Yes.

A. Not that I know of.

Q. Did the office here have copies of the minutes of the meetings of the stockholders which were held in Jersey City?

A. I think they were transcribed in the same book with the minutes of the board of directors.

368 Q. And that book was usually here in Chicago up to the time of the proceedings to foreclose?

Mr. DUPEE: He did not state that, he said it was here a portion of the time.

Mr. GRESHAM: I understood him to say it usually was in Chicago up to the time of the proceedings to foreclose.

A. I think I was assistant secretary for a period, for a time, and I took the minutes and had them written and sent to New York, and they were there transcribed in the regular record book; that was the case during the time I was assistant secretary; I do not remember just exactly how long that was, but my recollection now is it was nearly a year, the first year or portion of a year after its organization. You asked me whether I held any position, I had forgotten that.

Q. Well was this which contained the record of the meetings of the directors and on which was transcribed the record of the minutes of the stockholders' meetings held in New Jersey usually kept here in Chicago up to the time the suit to foreclose was instituted?

A. I think it was here a part of the time, but as to that I am not so certain, because I was not then—it was not part of my duties to keep that book and I did not pay much attention to it.

Q. When do you recollect of last seeing this book here in Chicago?

A. I should say something over a year ago.

Q. Did that book contain copy of the resolutions of the stockholders authorizing the directors to purchase the options on the various mill plants which were purchased and which are now held by the company and the receiver?

A. I am not certain as to that, but I think it contained all records of any acts of the company.

Q. And that book was sent to Mr. Untermeyer, in New York?

A. It was sent to the New York attorneys.

Q. Now, have you got a copy, Mr. Stein, of the written proposition that you made as the holder of options on the various mill plants of the company to sell those options to the Columbia Straw Paper Company?

Mr. ALLEN: Has the original been produced here?

Mr. GRESHAM: No.

Mr. ALLEN: Has anything been shown in connection with it?

Mr. GRESHAM: Yes.

Mr. ALLEN: I should object ordinarily to anything with reference to a copy unless it is shown that an original cannot be produced.

Mr. DUPEE: I object also for the complainants, to the production of the copy.

369 Mr. GRESHAM: We have made a motion requesting the copy and defendant has answered that the contract, I believe, is not in its possession.

Question withdrawn for the time.

Q. Have you the contract whereby you, or the proposition which you made to the Columbia Straw Paper Company to sell to it the options that you held on the various mill plants which subsequently passed into the hands of the Columbia Straw Paper Company?

A. No, sir; I have not that contract.

Q. Do you know where it is?

A. I do not know where it is. I presume it is in the hands of the New York attorneys.

Mr. DUPEE: I object to the witness making any statements except of his own knowledge.

The WITNESS: Then I do not know where it is.

Mr. GRESHAM:

Q. Was that contract ever in the possession of the Columbia Straw Paper Company?

A. Not that I know of, that is the officers of the company.

Q. Did you not address it to the Columbia Straw Paper Company, and deliver it to the Columbia Straw Paper Company?

The WITNESS: I would like to modify my previous answer. I was not an officer of the company at that time, as I recollect it, and I really don't know what disposition was made of the paper.

Q. Well, but the company did receive the paper; you know that, do you not?

A. Why, it is a case of presumption, I do not know.

Q. You made this proposition to the company?

A. The proposition was made to the company and was accepted by the company, that is as much as I know about it; I was not an officer of the company at the time.

Q. I understood that your proposition was reduced to writing, was it not?

A. Yes, sir.

Q. And signed by you?

A. Yes, sir.

Q. To whom did you on behalf of the company deliver it, the proposition in writing?

Mr. ALLEN: As representing the company?

Mr. GRESHAM: I say on behalf of the company.

A. I think it was delivered to the attorneys for the company.

Q. Who were those attorneys?

A. Guggenheimer, Untermeyer and Marshall.

Q. Where were they at the time you delivered them this contract?

370 A. I don't know whether that was at the New York office of the company or the New Jersey office, I am not certain which, wherever that meeting was held.

Q. How did you know at that time they were the attorneys for the company?

A. Why I don't remember just how I got the information, but I do know they were attorneys for the company.

Q. Now how was the proposition answered, in writing or verbally?

A. That I don't know, I do not remember.

Q. Did you ever see your proposition after it was delivered to Messrs. Guggenheimer & Untermyer as attorneys representing the Columbia Straw Paper Company?

A. I do not remember ever seeing it.

Q. Why do you presume that this contract now is in the possession of Messrs. Guggenheimer & Untermyer?

A. I think I had better modify that answer by saying I presume it is in the possession of the secretary of the company.

Q. Why do you presume it is in the possession of the secretary of the company?

A. Because he would naturally have charge of the papers of that kind.

Q. Was that paper ever here in Chicago?

A. Not that I know of.

Q. Have you a copy of that paper?

A. I don't think I have.

Mr. GRESHAM: Now, if the master please, we make a motion at this point, that the defendant, The Columbia Straw Paper Company, be required to produce this contract whereby Emanuel Stein — for the purpose of putting in evidence on this hearing, the proposition from Emanuel Stein to the Columbia Straw Paper Company, offering to sell to it the options which he held on the thirty-nine or forty various mill plants which the company subsequently acquired, which proposition it accepted.

Q. Mr. Stein, when did you first become connected with the organization of the Columbia Straw Paper Company? From when did you first begin to take and acquire options on the various mill plants which went into the Columbia Straw Paper Company?

A. My attention was first directed to it in February, 1892, I think, about that time; in February, 1892; I think we began taking options some time in May or June.

Q. Who was associated with you in taking options?

A. Mr. Church.

Q. Give his full name, please.

371 A. Mr. E. G. Church, Mr. John B. Halliday, Mr. Frederick C. Trebein, Mr. John B. Sherwood.

Q. Then you continued taking options along up to about December 1, 1892, I believe, did you not?

A. I think all the options were taken before that time.

Q. Before the first of December?

A. Before the first of December; yes.

Q. How many mills did you secure options upon?

A. Forty-two, I think.

Q. In whose names were these options taken?

Mr. ALLEN: Were they in writing?

The WITNESS: Yes, sir.

Mr. ALLEN: I think they should speak for themselves; I don't know that I care about it.

Mr. GRESHAM: I will not ask him as to the documents.

Mr. ALLEN: Go ahead.

A. Taken in the names of Philo D. Beard and Thomas T. Ramsdell.

Q. Who is Philo D. Beard?

A. Well, I don't quite know how to answer that.

Q. Where did he reside at that time?

A. At Buffalo, New York.

Q. What was his business?

A. He was vice-president of the Erie County savings bank at that time, and had other interests there, I believe.

Q. And a man who was a sort of a promoter?

(Counsel for complainant objects to the question as leading.)

Mr. ALLEN: Objected to on general principles; I would like to have the word "promoter" defined.

Mr. GRESHAM: An organizer, capitalizer, and financier of corporations.

A. I do not know of his having done any promotion work.

Q. How long had you known him before 1892?

A. Five or six years.

Q. Who was Thomas T. Ramsdell?

A. In business, you mean?

Q. Yes.

A. He was of the O. P. Ramsdell Shoe Company, Buffalo, New York, wholesale boots and shoes.

Q. Was he any relative of the parties?

A. No, sir.

Q. Any of yours?

A. Yes, sir.

372 Q. What relationship?

A. Brother-in-law.

Q. Now, to whom were these options which stood in the name of Beard and Ramsdell assigned?

A. The interest of Thomas T. Ramsdell was assigned to me five or six months prior to the acceptance of the options.

Q. Acceptance of the options by whom?

A. By myself.

Q. What did Mr. Beard do with his interest?

A. That was also assigned to me.

Q. Then in December, 1892, you held in your name the options of these various forty-two mill plants, did you not?

A. I think so; it was about that time.

Q. I don't mean particular days.

A. Yes.

Q. What was the aggregate price for which these various mill-owners agreed to sell their mills?

Mr. ALLEN: Now it comes to the point, it seems to me, where the written options should speak for themselves. I object, for the Columbia Straw Paper Company, to the introduction of any evidence on this subject unless it is the best evidence.

Mr. DUPEE: On behalf of complainants I make the same objection, and the further objection that the evidence is not competent unless they are shown to have been bondholders at the time.

A. It would simply be impossible for me to tell at this moment.

Q. Were these options in writing?

A. Yes, sir.

Q. I will ask you what was the consideration for the transfer of Mr. Ramsdell's interest in these options to you?

Mr. ALLEN: I suppose that is absolutely immaterial.

Mr. STEIN: It is your personal matter; you can answer or not, as you please; that has nothing to do with this transaction.

A. Mr. Ramsdell withdrew his connection from the thing and I took his interest in order to have the thing continue.

Q. Now, what did you pay these various mill-owners for these options, one dollar or some such nominal consideration, was it not?

Mr. ALLEN: I think that that matter is in writing; we would like to have it; I object to this question and anything concerning these options which it is stated are in writing, unless they
373 are produced. Let them speak for themselves, because it is a matter utterly foreign to the Columbia Straw Paper Company.

Mr. DUPEE: Question objected to as irrelevant.

A. The option specifies the consideration, I do not remember what it is; I think it states a certain consideration for the option, but that I am not sure about.

Mr. ALLEN: If there were, was it expressed in the written option itself?

The WITNESS: Yes, sir.

Mr. GRESHAM: What is your recollection as to what it was—was it nominal?

Mr. DUPEE: I object, as I do not think the bondholders should be bound by this.

A. I really don't remember the wording of the options.

Mr. GRESHAM: Now what has become of these options?

A. The last time that I saw them, which was during the time of the acceptance of the options, they were in Mr. Wolf's hands.

Q. Who was Mr. Wolf?

A. Mr. Wolf is of the firm of Dupee, Judah & Willard.

Q. Who did he represent at that time—who was he representing when you last saw these options in his hands?

Mr. DUPEE: State as to your own knowledge.

A. I don't know.

Mr. GRESHAM: Was he representing anybody?

A. That I don't know.

Q. He is the attorney of this bar here—Henry M. Wolf—is he not?

A. He is practicing here.

Q. And a member of the firm of Dupee, Judah, Willard & Wolf?

A. I don't know whether he was a member of the firm at that time; his name was not associated with the firm as it is on the card.

Q. His office was in their office?

A. Yes, sir.

Q. Well, when was that, as near as you can recollect?

A. That was, I should say, along in August or September, 1892, or about that time.

Q. That was after you had made your proposition to the Columbia Straw Paper Company?

Mr. ALLEN: The company was not organized then.

Mr. GRESHAM: Let me ask the question.

Mr. ALLEN: The form of the question is objected to; he has not testified to anything of the sort. However, I don't care.

A. I think that was before.

374 Q. What did you do with these options after you made your proposition to the Columbia Straw Paper Company and it accepted your proposition for the transfer of the forty-two plants to it?

A. I don't know what was done with them; they were left with Mr. Wolf.

Q. After the transaction between you and the Columbia Straw Paper Company was closed?

A. Yes, I should say so.

Q. And Dupee, Judah, Willard & Wolf at that time were solicitors for the Columbia Straw Paper Company, were they not?

A. At which time?

Q. At the time the options were left with Mr. Wolf, in August or September?

A. Well, I don't distinguish the date, I do not know when Dupee, Judah & Willard were elected attorneys for the company, the record book I should think would show that possibly.

Q. Do you know how long Messrs. Dupee, Judah, Willard & Wolf continued as attorneys for the Columbia Straw Paper Company?

A. No, I cannot give the exact date, no, sir.

Q. What was the consideration for the transfer from you to the

Columbia Straw Paper Company of the forty-two mills which the company subsequently acquired?

Mr. DUPEE: Was that in writing? Was the transaction by which you transferred the mills, or agreed to, in writing?

The WITNESS: Yes, sir.

Mr. DUPEE: Then I object to testimony as to the contents of them.

The WITNESS: You may say thirty-nine instead of forty-two speaking of the transfer.

Mr. DUPEE: Was the consideration stated in the contract?

The WITNESS: I think it was.

Mr. DUPEE: Then I object to the witness stating the contents of the writing.

Mr. GRESHAM:

Q. Where is that contract?

A. I should say it is in the hands of the secretary, without knowing positively.

Mr. GRESHAM: Well, if the master please, the bill and mortgage which were put in evidence, show the consideration for the transfer, so I presume I will be at liberty to ask him about the consideration for it?

Mr. ALLEN: It is expressed in the resolution.

Mr. DUPEE: What is put in the bill counsel has the benefit of; that does not justify him in asking about it.

375 Mr. GRESHAM:

Q. Who were associated with you, Mr. Stein, in making the contract with the Columbia Straw Paper Company for the transfer and sale of the thirty-nine mill plants?

Mr. DUPEE: If anybody?

A. The contract was made directly with myself, that is, with the company by myself.

Mr. GRESHAM: Was anybody interested with you as a silent partner in your interest in the options at the time you made the contract with the company to sell to it the mills?

A. Interested, in what manner do you mean, Mr. Gresham, I don't quite comprehend, I don't quite comprehend the question, make it a little more explicit.

Question withdrawn.

Q. How did you come to make that proposition to the Columbia Straw Paper Company to sell to it those options which you held?

A. By reason of the gentlemen associated with me in procuring the options, who deemed it of great value to concentrate these many properties under one management.

Q. Who were these gentlemen?

A. Chiefly Mr. Sherwood.

Mr. DUPEE: What Sherwood is that?

The WITNESS: Mr. John B. Sherwood.

Mr. ALLEN: Who is sitting here now prompting Mr. Gresham occasionally?

The WITNESS: Yes, sir; together with the other gentlemen that I named.

Mr. GRESHAM:

Q. I think you said Mr. Ramsdell dropped out and Mr. Beard——

A. I am speaking of the gentlemen associated with me originally.

Q. No, I am asking about transferring the options to the Columbia Straw Paper Company?

A. I answered the question as I understood it.

Q. Who was associated with you in the deal which you made in transferring these options to the Columbia Straw Paper Company?

Mr. DUPEE: Objected to because the witness has testified in the first place that he did not transfer the options to the Columbia Straw Paper Company.

Mr. GRESHAM: Well, transferred the mills then.

Mr. DUPEE: Who was interested with him in these transfers would be shown by the instruments themselves.

The WITNESS: Do you mean who procured the stock of the company that was allotted to me?

376 Mr. GRESHAM:

Q. No, at whose suggestion did you make the proposition to the Columbia Straw Paper Company that you would sell or transfer or cause these mills to be transferred to the Columbia Straw Paper Company?

(Objected to by counsel for complainant as wholly immaterial.)

A. I think the options set forth the plan to be pursued in connection with the organization.

Q. I am not asking you about the plan now, but at whose suggestion did you make the proposition?

Mr. ALLEN: He said it was Mr. Sherwood's and these other gentlemen he had communicated with.

Mr. GRESHAM: Wipe the options out. On the first of December you held all the options; Mr. Ramsdell had dropped out and Mr. Beard had assigned his interest to you. At whose instance did you make the proposition to the Columbia Straw Paper Company?

A. Conferences were held in reference to that between Mr. Beard, Mr. Samuel Untermeyer, Mr. Sherwood, Mr. Church, Mr. Halliday and Mr. Trebein.

Q. Who is Mr. Samuel Untermeyer?

A. He is of the firm of Guggenheimer, Untermeyer & Marshall. The firm then was Guggenheimer & Untermeyer.

Q. At whose suggestion was it then that you made this proposition?

Mr. DUPEE: If anybody's?

Mr. GRESHAM: I am asking the question please, Mr. Dupee.

A. The original option, or the option, was drawn up by Mr. Untermeyer, which I think sets forth the plan to be pursued. The plan as outlined in the option was carried out. Who made the suggestions I don't know; I don't know that anybody did for the proposition.

Q. I mean your proposition to the company?

A. The proposition to the company was drawn by Mr. Untermeyer.

Q. Which you made, which is recited—that was drawn by Mr. Untermeyer, and you signed it?

A. Yes, sir.

Q. How was it arranged that you were to pay the mill-owners? How was it arranged for the money; how was that arranged for?

Mr. DUPEE: Objected to. Was that arrangement in writing?

Mr. ALLEN: Part of the option, wasn't it?

A. The option set forth.

377 Mr. GRESHAM: How did you arrange to get the money; that is what I am asking about?

A. We were to issue bonds.

Q. Who was to put up the money then?

Mr. DUPEE: What money?

Mr. GRESHAM: The money which went to pay for these plants, so far as cash was paid.

Mr. DUPEE: Objected to if it is contained in writing. Was it, Mr. Stein?

Mr. GRESHAM: I object to the suggestion to the witness.

Mr. DUPEE: I am getting the suggestion, if it was in writing.

Mr. GRESHAM: I am asking for the fact.

Mr. DUPEE: I ask if it was in writing.

The WITNESS: I don't know just what the question is.

(Last question read.)

A. That was put up by the persons subscribing and paying for the bonds.

Q. Have you a list of the parties who agreed to subscribe or pay for the bonds the company was to issue?

A. No, sir.

Q. That was all understood then before you made your proposition to the company; was it not?

A. I don't know about that.

Q. Did these parties who agreed to furnish this money and subscribe for the bonds, were they the parties who got the bonds after the company had accepted your proposition and the securities were issued?

Mr. DUPEE: State of your own knowledge.

Mr. GRESHAM: I object to the suggestion.

Mr. DUPEE: I object to the form of the question.

Mr. GRESHAM: We insist on an answer to the question.

Mr. ALLEN: I object to the question, because as I understand the form of the question you have not stated it correctly even in view of the witness' answer to your previous question. He says he did not believe that the money was all provided for at the time this proposition was made.

The MASTER: You can answer the question.

Mr. ALLEN: I call attention to the fact he has not stated the bonds were subscribed for prior to the transfer to the company.

(Last question read.)

A. I don't know what disposition was made of the bonds by those who purchased them originally.

Q. I am not asking you for that. Did the parties who agreed in these preliminary negotiations and conferences to take
378 bonds of the company put up the money which enabled you to make the cash payments—

A. There was no positive agreement as to that.

Q. —get the bonds?

A. Nobody absolutely agreed to put up the money to take bonds.

Q. Was it understood?

A. The supposition was they might be placed.

Q. Did Mr. Samuel Untermeyer undertake or give any intimation that he would place any of the bonds?

A. Mr. Untermeyer took a large block of the bonds.

Q. Was he present at this preliminary conference?

Mr. DUPEE: What preliminary conference?

Mr. GRESHAM: He has spoken of them. I am inquiring of what he has already mentioned.

A. He was present at some conferences.

Q. He is the Mr. Untermeyer who is a member of the firm of Guggenheimer & Untermeyer?

A. Yes, sir.

Q. Is he the man who drew the proposition that you made to the Columbia Straw Paper Company?

A. Yes, sir.

Q. Was Philo D. Beard present at any of these preliminary meetings and conferences?

A. Quite a number of them; yes, sir.

Q. Did he intimate, or was there any understanding with him that he would take any of these bonds?

A. He thought he could place quite a number of the bonds, and would take some himself.

Q. And he subsequently did place some of the bonds and took some himself?

A. Yes, sir.

Q. And Mr. Untermeyer did subsequently?

A. Yes, sir.

Q. Now at these meetings it was understood what the mill-owners

would sell their plants for, was it not? Was not that subject gone into and canvassed?

A. I think the amounts to be paid for the property, yes, sir.

Q. After your proposition was accepted by the company what evidences of the fact that it would issue the securities did it give to you?

A. I do not remember that.

Q. For the purpose of refreshing your recollection, I will ask you if the company did not give you a certificate calling for a thousand bonds, a temporary certificate?

379 A. I would rather you would refer to the books for that; that is not clear to my mind at the present time just the way that was done.

Q. Well, doesn't this reciting here in the mortgage refresh your recollection that the securities were all to be delivered to you (handing witness copy of same)?

A. To me "or my nominee," it says here, the sum of five million dollars.

Q. And they were delivered to you or your nominees?

A. I should say yes.

Q. Now, at the time you made the proposition to the company and the company accepted it, you were not an officer or director of the company?

A. No, sir; I think not.

Q. How soon afterwards, after your proposition was accepted did you become an officer and director of the company?

A. I do not know that; the record book will show my election.

Q. Wasn't it very soon after?

A. It was some time after, but I don't know how soon.

Q. How were these securities, these bonds, delivered to your nominees; what was the process by which that was done?

A. I think there was an order given on the Northern Trust Company, if I recollect distinctly.

Q. Now, the parties who undertook, who intimated they would take the bonds and put up the money, to whom did they pay the money in the first instance?

A. I think all the money was paid to the order of Samuel Untermyer; *that is my recollection; how I am not positive.*

Q. He was the treasurer of the parties who were organizing and financing the company then, wasn't he?

A. I don't know as to that.

Q. Treasurer or trustee?

A. I do not know that he served in any capacity of the kind.

Q. Now, when the money was paid to Samuel Untermyer, he deposited the money with the Northern Trust Company?

A. Of that I am not sure, I think the money was placed there.

Q. And by it distributed to the mill-owners?

A. I think by checks from the Northern Trust Company.

Q. So that none of the money that went out on these bonds went into the actual treasury of the Columbia Straw Paper Company, aside from the two hundred thousand dollars?

A. Aside from the two hundred thousand dollars.

Q. Now the Philo D. Beard who was present at these preliminary conferences, and who intimated that he would, and who did
380 take some of the bonds, was the Philo D. Beard who subsequently became president of the Columbia Straw Paper Company?

A. Yes, sir.

Q. Was he the president of the Columbia Straw Paper Company at the time you made your proposition to the company to sell to it the mill properties?

A. I am not sure as to that, I think perhaps he was, but I am not certain.

Q. Was he a member of the board of directors of the Columbia Straw Paper Company?

A. If he was president he must have been a member of the board.

Q. Well, he might have been a member of the board without being president?

A. That I do not know, I do not remember.

Q. Do you recollect who the original incorporators of the Columbia Straw Paper Company were?

A. I do not remember their names; no, sir.

Q. Now, in your answer you state that the following persons were elected directors of the Columbia Straw Paper Company on its organization; the first board of directors: Philo D. Beard, William C. Heppenheimer, William C. Taylor, Maurice Untermyer, Moses Weinman, J. C. Guggenheimer, T. L. Hermann, Harry C. Manheim and Samuel H. Guggenheimer. I will ask you to state if it is not a fact that J. C. Guggenheimer, T. L. Hermann and Harry C. Manheim were at that time clerks in the office of Guggenheimer & Untermyer, in the city of New York?

A. I am not sufficiently positive of that to swear to it.

Q. Do you know these three gentlemen, just named?

A. Guggenheimer and Hermann, I don't know them, unless it is the Guggenheimer who is the partner of Untermyer, I do not know his initials.

Q. Well, do you know J. C. Guggenheimer?

A. No, unless he is the partner of Mr. Untermyer.

Q. T. L. Hermann?

A. I don't know T. L. Hermann, I do not know the initials, you understand, of Mr. Guggenheimer, the partner of Mr. Untermyer.

Q. Is not he a son or brother?

A. I do not know.

Q. Do you know Mr. Heppenheimer?

A. Yes, sir.

Q. Where does he reside?

A. His home, I think, is in New Jersey.

381 Q. What is his business?

A. Attorney.

Q. And where does he practice, where is his office?

A. New Jersey.

Q. Whereabouts in New Jersey?

A. Oh, at Hoboken.

Q. Who is William C. Taylor?

A. There is a Taylor in Mr. Untermeyer's office, I don't know whether that is William C. or not; at least there was. I am not personally acquainted with these parties there at all.

Q. Samuel H. Guggenheimer, who is Samuel H. Guggenheimer? Is he the Samuel H. Guggenheimer who is secretary of the company?

A. I am not certain, I understand that those are his initials; I think it is.

Q. Now, Mr. Stein, how did you dispose of the stock which you received from the Columbia Straw Paper Company, its entire issue of stock?

A. Well, a large quantity of the stock was given to the millmen as a bonus consideration for their properties.

Q. And there was a large part also given to Philo D. Beard, Samuel H. Untermeyer, and these other parties who agreed to, and who did take bonds, was there not?

A. Yes, parties that subscribed for the bonds received some of the stock as a premium, and Mr. Sherwood received some of it.

Q. Yes? He received how much?

A. Twenty-five thousand.

Q. Do you know how much Mr. Beard received?

A. No, I do not.

Q. Do you know how much Mr. Untermeyer received?

A. No, I do not.

Q. Do you know how much Mr. Dupee received?

A. No, sir.

Q. Do you know how much Mr. Willard received?

A. The certificate book, I should think, would show all that.

Q. The only person you know how much was what Mr. Sherwood received?

A. Yes; because he called it to my mind in communications, so that amount fixed itself.

Q. Now, was it understood that these gentlemen, amongst yourselves, in these negotiations to determine the amount how the stock was to be used in part payment, and was it decided how it was to be distributed among yourselves?

A. There were no certain conditions; certain amounts of
382 stock to be given for expenses incurred, and matters in connection with the procuring of options, and so forth.

Q. Was there any agreement in writing, whereby the money should be paid to Mr. Samuel Untermeyer and by him deposited with the Northern Trust Company, and checked from there to the mill-owners on his order?

A. I do not know of any such agreement.

Q. You never saw any such agreement?

A. No; not that I remember.

Q. I will ask you if there was not an agreement in writing between Mr. Beard and Mr. Untermeyer and these other parties who met in these preliminary conferences as to the organization of a

company and conditions upon which you would make a proposition to sell to the company these options or the plants which the options represented?

A. I have no recollection of any such agreement.

Q. If there was such agreement you would recollect it?

A. I think so.

Q. Therefore you say there was no such agreement?

A. I say I do not recollect it.

Q. Now, did you go ahead and accept these options simply on the verbal statement of these gentlemen that they would take bonds and put up money enough to enable you to make the cash payments?

A. Yes, sir; that is my recollection of it.

Q. They all understood what the properties were to be acquired for?

A. I presume they did.

Q. Were these options ever examined by either Mr. Untermeyer, Mr. Beard, or Mr. Wolf?

A. Mr. Untermeyer had the options at the office. I am not sure whether Mr. Beard ever looked them all over, I am not certain.

Q. Did Mr. Untermeyer look them all over?

A. I think they probably took my statement as to that.

Q. Were the options ever in the office of Dupee, Judah & Willard before the company was organized?

A. They were not there before the time stated, that I remember seeing them there.

Q. That was in August?

A. That was in August or September.

Q. The company was organized in December, 1892, was it not?

A. I do not remember that date.

383 Q. That is the date it is stated in here?

A. I cannot fix these dates.

Q. I am only stating them to get them relatively.

A. These are all matters of record.

Q. But were these options in the office of Dupee, Judah & Willard, in Chicago, prior to that time?

A. Yes, sir; I say they were in Mr. Wolf's office, I do not desire to connect the firm, but Mr. Wolf individually in this matter.

Q. You say Mr. Untermeyer, you think, took your statement rather than made a close examination of the options themselves?

A. The options were left with him, how closely he examined them I do not know.

Q. You knew what the aggregate considerations in the options was?

A. I presume I did at that time.

Q. Would not you recollect that now?

Mr. DUPEE: If he did, I should object to his stating it.

A. No, it would be impossible for me to remember, many things have transpired since then.

Mr. GRESHAM: We make a motion that the defendant company be required to produce here for our inspection and for use as evidence in this case the options which Mr. Stein delivered to the company at the time of the transaction between him and it, whereby the company purchased the mill plants, was closed, and which his testimony discloses were in the custody of the secretary of the company.

Mr. ALLEN: Are you not defining something else than the options, because the testimony shows the options never to have been in the hands of the company.

The WITNESS: I said the options were left with Mr. Wolf, or in his office.

Mr. DUPEE: He could not have been attorney for the company then.

Mr. GRESHAM:

Q. I think you said they were subsequently in New York?

A. Oh, that was long before they were brought back here; that was long before the organization; that was long before the thing; that was long before the organization was going to be possible.

Adjourned to 10.00 a. m., Monday, December 30, 1895.

384 THE NORTHERN TRUST COMPANY ET AL. }
vs.
COLUMBIA STRAW PAPER COMPANY ET AL. }

MONDAY, December 30, 1895—10.00 a. m.

Continuation pursuant to adjournment.

Present: Mr. Dupee, Mr. Allen, Mr. Gresham.

Testimony of Emanuel Stein.

EMANUEL STEIN.

Cross-examination by Mr. DUPEE:

Q. Now, Mr. Stein, my recollection is that when you testified on Saturday, you testified that Mr. Samuel Untermeyer, Philo D. Beard, E. G. Church, Mr. Trebein, Mr. Halladay and Mr. Sherwood and yourself were associated in a scheme to organize a corporation to take the titles to the properties on which you then held options. Were there any other gentlemen than those named associated with you, either directly or indirectly in the proposed scheme of organizing a corporation as you subsequently did, to take possession of the property; if so, please name them?

A. I do not know that I testified that these gentlemen were associated with me in the organization of the company.

Q. In a scheme to bring about the organization of a company is the question, in the year 1892?

Mr. DUPEE: I think the witness said that these gentlemen—that conferences were held in reference to making a proposition to the Columbia Straw Paper Company, between the parties you have

named, I think that is his testimony. It is on page 19 of the testimony.

A. I think the general plan was that these gentlemen, that is Mr. Halladay, Mr. Church, Mr. Trebein and Mr. Sherwood were to secure the options.

Q. Well, after the options were secured, there were conferences after the options were secured, as to how the corporation was to be organized, if at all, were there not?

A. There were conferences among the last-named gentlemen, that is really all the conferences, among the last-named gentlemen were planning the formation and capitalization of the corporation that should be formed.

Q. Were there any other parties than the parties you have named, parties to the conference as to how the corporation should be
385 organized and capitalized prior to your making the proposition to the company to sell to it the options?

A. I do not think there were any others interested at the time the plan for organization, the plan of the proposed organization was discussed.

Q. Were any members of the firm of Dupee, Judah & Willard consulted about the plan of the proposed organization?

A. I think not until after most of the options had been secured.

Q. I meant to ask you were any members of the firm of Dupee, Judah & Willard consulted about the plan of the proposed organization and capitalization of the corporation before you made your proposition to the corporation to sell to it the options which you held?

Mr. DUPEE: Confine yourself to your own knowledge.

A. After the plan was outlined by the gentlemen named, and before the options were prepared, I conferred with Mr. Beard in reference to the possibility of organizing a company for the control of these plants upon the basis outlined in the conferences and stated to him that from statements made to me by these gentlemen who were interested in mill properties, were mill-owners interested in the sales of the product and in other details in connection with such an organization, that I believed it would be a good business to undertake, and that if he thought it could be financed, I would like to have him join with me in undertaking it; he stated he would think the matter over and we might get together at a later date and further discuss the subject. We afterwards had a meeting at Buffalo with Mr. Ramsdell and went over the proposition again and it was understood between us that if the options could be secured upon the basis that was outlined at these previous conferences with Mr. Sherwood and others, that we might undertake it, *provided a certain number of tons could be secured.* The first thing to do was to prepare the options, make the effort, and see if the options could be obtained. Mr. Beard became acquainted with Mr. Samuel Untermeyer, and the result of that was that Mr. Untermeyer prepared the options. There was then a meeting held in Chicago between Mr. Trebein, Mr. Halladay, Mr. Church, Mr. Beard

and myself. I think Mr. Ramsdell was present. Mr. Sherwood was not present at the meeting, but he was in the office of the hotel where the meeting was held, when the draft of the options prepared by Mr. Untermeyer was submitted to these gentlemen, and the terms and conditions contained therein, agreed to, and it resulted in the option that was finally sent out. After that meeting Mr. Beard handed me a note of introduction to Mr. Wolf.

386 Q. Henry M. Wolf?

A. Henry M. Wolf, with the request to Mr. Wolf that he should give me any attention in a legal way that was necessary in the procuring of the options.

Q. Was Henry M. Wolf at that time a member of the firm of Dupee, Judah, Willard & Wolf?

A. I do not know.

Q. Their offices were together?

A. Yes, sir.

Q. Where was your office at that time?

A. Pullman building.

Q. And after the options were secured did you continue to confer with Mr. Wolf as a legal adviser in connection with the affairs of the proposed organization?

A. I frequently conferred with Mr. Wolf about conditions existing, how we were getting along, and things of that sort.

Q. Did you have any conferences with any other member of the firm of Dupee, Judah & Willard?

A. I think not, only in a general way.

Q. Well, now, when did you learn as to how the company was to be financed, before or after the options were secured?

A. They talked about it before and after.

Q. Was there any intimation and understanding that any member of the firm of Dupee, Judah & Willard would take any bonds in the proposed corporation?

A. I understood that they would subscribe for some of the bonds.

Q. Now, about when, as near as you can recollect, was the taking of the options completed?

A. That is a very hard question to answer. Why, some of the options there was considerable discussion about them, there were delays and things of that sort. I cannot give you the date when they all were.

Q. It was prior to the first of December, 1892, was it not?

A. That I do not know.

Q. The company, I believe, was incorporated December 6, 1892. Now, do you recollect whether the taking of the options was completed before the incorporation of the company?

A. I am not positive whether all the options were in at that time or not.

Q. Of course, they were all in when you made your proposition to the company to transfer to it the options to the titles to the properties which the options represented, were they not?

A. I presume so.

387 Q. Did any member of the firm of Dupee, Judah & Willard, including Mr. Wolf, know of your proposed action in making the proposition to the company to take the options which you held?

A. That I do not know.

Q. Were there any conferences with any member of the firm?

A. No, sir; not that I know of.

Q. Was it prior to your making this proposition that you learned or understood that that firm or certain members of that firm would take some of the bonds of the proposed corporation?

A. I do not know when I got that information, whether it was before or after that.

Q. Well, at that time, at the time you made your proposition to sell the options to the company, did you know where the bonds would be placed and disposed of on the company's accepting the proposition?

A. I did not know positively, no, sir.

Q. Who had that information of this, who were familiar with and were aiding in conducting the organization of the proposed company?

A. Mr. Untermeyer and Mr. Beard, and myself, thought the bonds might be placed.

Q. Well, had you already arranged with the parties to take the bonds?

A. Nothing definite, I don't think.

Q. Well, Mr. Beard had arranged to take some himself?

A. Yes, sir.

Q. And Mr. Untermeyer had arranged to take some himself also?

A. I do not know at that time.

Q. Now please explain this fund that you spoke of that Mr. Untermeyer deposited in the Northern Trust Company after the organization of the Columbia Straw Paper Company, and after you made your proposition to sell the company the options?

A. I understood that Mr. Untermeyer had remitted funds to Chicago, which he placed in the hands of Mr. Wolf, which I understood were deposited in the Northern Trust Company as the amount covering his subscription to the bonds.

Q. Who, Mr. Untermeyer's subscription?

A. Yes, sir; this is information that I have.

388 Redirect examination by Mr. GRESHAM:

Mr. DUPEE: I object to the witness stating anything excepting what he knows himself.

Mr. GRESHAM: How did you get your information, this information?

A. I got that from Mr. Wolf.

Q. Do you know what the amount was, did Mr. Wolf state what the amount was that was placed to his credit in the Northern Trust Company by Mr. Untermeyer?

(Objected to by counsel for complainants because the witness has not testified that Mr. Wolf stated any amount was placed to his credit.)

A. I think there was about six hundred thousand dollars placed in the Northern Trust Company to the credit of Mr. Untermeyer by Mr. Wolf.

Q. You mean placed by Mr. Untermeyer and to be to the credit of Mr. Wolf, do you not?

A. No, sir.

Q. Placed in the Northern Trust Company to the credit of Mr. Untermeyer?

A. Yes.

Q. Do you know where Mr. Wolf got these funds?

A. A portion of them from Mr. Untermeyer and a portion of them from Mr. Beard.

Q. Do you know whether he got any of these funds from any member of the firm of Dupee, Judah & Willard?

A. No, sir.

Q. Now this fund was deposited in the Northern Trust Company after the corporation was organized, after you had made your proposition to sell to it the properties covered by the options and it had accepted this proposition, but before the bonds were delivered; is not that a fact?

A. I think so.

Q. Now, what did the company give you, what evidence of its acceptance of your proposition?

A. I do not remember.

Q. Why was it the company did not issue to you the stock and bonds as called for in your proposition?

A. I think the proposition covered the issue to me or my nominees, it was not absolutely necessary it should be directly to me.

Q. Then you understood who your nominees were of course before you erected the company?

A. Not necessarily.

389 Q. Now, isn't it a fact that you were really the conduit for other parties in making this proposition to the Columbia Straw Paper Company in the sale of properties represented by these options?

A. I should say partly so.

Q. Do you recollect how much cash it took to acquire the title to the various mill plants according to the amounts you agreed to pay?

A. I do not recollect that.

Q. Where were the transactions closed with the mill-owners for acquiring title to their properties?

A. At Mr. Wolf's office.

Q. Here in the city of Chicago?

A. Yes, sir.

Q. The options required a cash payment, did they not, to the mill-owners?

A. I think so.

Q. Did Mr. Wolf pay them that cash?

A. I think he did.

Q. How did he pay it? I will save the question and ask you if he did not pay it by giving the various parties checks on this fund spoken of which was deposited in the Northern Trust Company's bank.

A. I think the checks were drawn to my order and endorsed by me to the parties.

Q. Drawn by whom?

A. Drawn by Mr. Wolf.

Q. Mr. Untermeyer was then in New York?

A. Yes, I presume so.

Q. He was not here?

A. He was not here, not at that particular time.

Q. I hand to you a paper dated Chicago, Illinois, April 5, 1893, purporting to be a receipt from the Northern Trust Company to the Columbia Straw Paper Company, calling for one thousand bonds and providing that they shall be delivered upon an order from the Columbia Straw Paper Company by Philo D. Beard, its president, or E. Stein, its treasurer, and ask you who drafted that paper?

A. I presume it was drafted by Mr. Wolf.

Q. Do you know his handwriting?

A. I should say this is rather like it, but I would not swear that it was.

Q. How long did the firm of Dupee, Judah & Willard continue attorneys for the Columbia Straw Paper Company?

A. I was not certain when they were appointed attorneys.

390 Q. Now, Mr. Stein, where was the stock delivered to the parties who held the plants at the time these checks were delivered, here in Chicago?

A. Chiefly, I think.

Q. By whom were these deliveries made?

A. Through Mr. Wolf's office chiefly.

Q. The stock book was here at that time?

A. Yes, sir, there were temporary certificates at that time, I think, before the engraved certificates were received.

Q. Now Mr. John D. Hood, do you know whether he put up the money for which he received bonds?

A. I do not know anything about that.

Q. I will ask you to look at that paper and state what it is (handing paper to witness).

A. This is an order on the Northern Trust Company for the delivery of certain bonds to John D. Hood upon the surrender of the order and is signed by the Columbia Straw Paper Company, by myself as treasurer, and it is countersigned by Dupee, Judah & Willard, attorneys for the Columbia Straw Paper Company.

Q. Now what did the Columbia Straw Paper Company receive from Mr. Hood for this receipt?

Mr. DUPEE: If you know.

Mr. GRESHAM: The treasurer will be presumed to know that, but I adopt that suggestion.

A. I presume this was part of the consideration as upon the terms accepted by the company for the transfer, that is, the properties, and part of the \$200,000 cash which I was to turn over individually to the company; this may be a part of it; I do not know.

Q. Now here are papers showing orders on the Northern Trust Company signed by the Columbia Straw Paper Company, by you as treasurer, calling for the delivery to John D. Hood of 167 bonds. Did Mr. Hood pay any cash into the treasury of the company for these bonds, at the time you gave him these orders?

A. I do not remember just what the plan of procedure was at the time of these transactions; but the company was to receive from me two hundred thousand dollars, in working capital, in addition to the transfer of the property.

Q. Now answer this question, if you can.

A. That is as near as I can answer it.

Q. Was the agreement on your part to pay into the treasury of the company two hundred thousand dollars working capital reduced to writing?

A. I do not remember, the records will show that.

391 Q. What records?

A. The acceptance of the proposition I suppose ought to.

Q. Was this agreement made prior to or after the making of the proposition to the company to transfer the titles to these properties, and of which this might have been a part?

A. Was that a part of the proposition, to pay two hundred thousand dollars?

Q. It may have been, we never have seen that. (Referring to pamphlet and handing same to witness.)

A. This is not the proposition.

Q. It refers to it, that is all. We have made, you understand, we have made a motion to produce it. I asked whether that was in your proposition to sell or was it in a separate instrument?

A. I think it is in the proposition.

Q. What is your recollection?

A. That is my recollection that I think it is in the proposition.

Q. Well, you would probably have a correct recollection inasmuch as it involves two hundred thousand dollars?

A. There is no question about the agreement to pay two hundred thousand dollars, but I am not certain whether it is in the proposition or some other agreement in connection with it. I am not positive as to that; my recollection is, that is, it is in the proposition.

Q. What did you do with the stock that the company agreed to issue and deliver to you, its entire capital stock?

A. Issued to mill-owners and others.

Q. What others aside from mill-owners?

A. I think the record book will show the issues of the stock.

Q. Haven't you any recollection as to any single individual?

A. There was some issued to Mr. —.

Q. I beg pardon, bonds, but not stock?

A. I am naming the mill-owners.

Q. Well, leaving out the mill-owners?

A. Some to myself, some to Mr. Beard, some to Mr. Untermeyer, some to Mr. Wolf, some to Mr. —; in fact a great many people; I would have to refer to the stock book; it is impossible for me to remember the individuals.

Q. How was it issued, how did the company issue it, on your order; did you give the company an order on the company for it to issue so many shares of stock to Mr. Philo D. Beard, for instance; how did you get his stock?

A. The certificates were made out in Mr. Wolf's office and issued from there chiefly.

392 Q. Didn't you have to issue some orders? The stock was either issued directly to you or to your nominees?

A. I probably gave him some orders to issue the stock. I do not recollect distinctly.

Q. Did not you have some arrangement, some method of distribution of bonds and stock?

A. There probably was, but I do not just remember now what it was.

Q. Have you any idea of about how much stock Mr. Beard received?

A. No, sir, not anything that would be—

Q. Did he receive a considerable number of shares?

A. I prefer not to guess, you will have to take the records for that.

Q. We cannot probably get the records?

A. I do not know of any reason why you should not.

Q. The company has got them and is in the hands of a receiver and they are down in the State of New Jersey?

A. That is the fault of the New Jersey law.

Q. On that showing, we are entitled to have your best recollection?

Mr. DUPEE: I don't agree with you.

Mr. ALLEN: I don't think so, I think it would be a great deal better to take the records on that.

Mr. GRESHAM: Have you any recollection at all?

Mr. DUPEE: Do you mean on that subject or generally?

Mr. ALLEN: Of course he ought to go clear through the list if you are going to do anything. He testified he remembered one item.

Mr. SHERWOOD: He remembered me.

Mr. GRESHAM: Now, Mr. Stein, when you made your proposition to the company to sell the plants represented by those options and received from it a million bonds and four million of stock, did you have any idea as to what was to become of these securities, did you have some arrangement, some plan for the distribution of them?

A. I think I stated Saturday that the proceeds of the bonds and

a large part of the stock were to go to the mill-owners in part payment, and premiums given on bond subscriptions and stocks and commissions paid for subscriptions, and so forth.

Q. Well, by whom was that determined?

A. The amount to be paid to the mills was determined by the options.

Q. Then who determined as to what you would do with the balance of it?

393 A. The balance was determined by the people, financing the thing, the sale of the bonds, and so forth.

Q. Well, it was understood the mill-owners were not to get bonds, was it not?

A. No, they were not.

Q. The people who were financing the scheme would take the bonds, wasn't that the understanding?

A. Take or dispose of the bonds.

Q. Well, were they to take or get any of the stock?

A. There was stock given as premium, as I said, with the bonds, and commissions for placing the bonds.

Q. How much premium, as you call it, were given with the bonds?

A. I am not certain whether it was forty per cent. common and twenty per cent. preferred, or twenty per cent. common and ten preferred, it is either forty and twenty, or twenty and ten, I am not certain which.

Q. Now, the parties who were financing the corporation, how much did they agree to put up?

A. I do not remember that, Mr. Gresham.

Q. Did you put up any money yourself?

A. Yes, sir.

Q. How much?

A. I think I subscribed for twenty-five or thirty thousand of the bonds, possibly forty, I am not sure.

Q. I am asking you how much money you put up?

A. For purchasing bonds?

Q. Yes.

A. I do not know exactly what the amount was.

Q. Do you know how much money was put up by other parties who agreed to finance and did finance the corporation, including yourself?

A. I think about seven hundred thousand dollars.

Q. How much did it take to pay the mill-owners the cash payments you agreed to pay them?

A. I do not remember that.

Q. Then, on the million of bonds, seven hundred thousand dollars was put up?

A. I think about that, I am not sure as to the exact amount.

Q. All the money that was put up in the organization and financing of the corporation was this seven hundred thousand dollars?

A. No, sir.

Q. What other money was put up?

394 A. There was a million dollars in bonds sold, there was a million dollars put up.

Q. I think you said seven hundred thousand dollars?

A. By those parties, I said.

Q. Who put up the other three hundred thousand?

A. I don't know, different people who subscribed for the bonds, bought bonds.

Q. Of whom did they buy the bonds, yourself?

A. I presume so.

Q. Wouldn't you recollect a transaction involving three hundred thousand dollars?

A. Yes, sir.

Q. Can you give the names of any of the parties who bought the bonds from you?

A. Why, the bond register ought to show who were the purchasers of bonds and holders of bonds; of course there are quite a number of transfers.

Q. Well, could these bonds be issued to you, perhaps direct, and then transferred either on the register or by delivery?

A. This shows how the bonds were delivered (pointing to the orders read in evidence).

Q. I know, but it does not show who got the money on them.

A. The mill-owners certainly got the money or we would not have title to the properties.

Q. Well, they only got seven hundred thousand dollars or less?

A. That I am not sure of.

Q. Didn't you just state it took about seven hundred thousand dollars to pay the cash funds paid to the mill-owners?

A. No, sir; I told you I did not know the exact amount.

Q. Well, "about," I say.

A. No, sir; you did not ask the question; you asked the question, but not as to the payment to mill-owners; you asked me how much money was originally put up, and I said about seven hundred thousand dollars by these gentlemen who were financing the thing; that was your question.

Q. Do you know how much money it took to pay the mill-owners the cash payments that were made to them?

A. I am not certain; I do not know that amount.

Q. What is your recollection as to the amount?

A. I do not want to guess at it.

Q. Haven't you any recollection as to what it was?

A. Not sufficiently close to state an amount.

395 Q. I will ask you to state this, was there any other sum than a million dollars put up by the parties who financed this corporation, either in payment for bonds or stock of the corporation?

A. Yes, sir; there was.

Q. By whom?

A. In the purchase of some of the preferred stock.

Q. Who were the parties?

A. Mr. Untermyer, Mr. Beard and myself.

Q. How much preferred stock did you and Mr. Beard and Mr. Untermyer purchase?

A. I think there was fifteen or twenty thousand dollars put up; I am not certain as to the amount.

Q. How much stock did you get for that fifteen or twenty thousand dollars?

A. That I do not know.

Q. Haven't you any recollection at all?

A. I think there was fifteen or twenty thousand dollars' worth of the stock, I am not certain.

Q. In other words, you paid par for your stock?

Mr. ALLEN: You understand Mr. Gresham is asking you about moneys that went to the company?

The WITNESS: Well, I don't know whether that would apply to that question then.

Q. Now, can you state about what proportion of the stock was used in paying the mill-owners, of the total issue of four millions? You got it all didn't you?

A. Myself or my nominees?

Q. Yes.

A. No, sir; I cannot tell that; I still suggest that the record will show that; I prefer not to give a guess on that.

Q. Would the record show that?

A. I presume they would

Q. Why would they?

A. Simply because the stock was issued.

Q. It may have been issued to you and assigned. How many mill-owners were taken in?

A. There were thirty-nine altogether.

Q. Cannot you form some conception, out of this four millions of stock, how much you gave to the mill-owners?

A. No, sir; not sufficiently close to approximate.

Q. Approximate it the best you can.

A. I would rather not approximate it.

Q. I insist upon your approximating it, giving your best recollection.

396 Mr. ALLEN: I will object on the ground that the options will speak for themselves, as I did before.

Q. I will ask if there were not some changes made in the options at the time of the final negotiations?

A. Yes, sir.

Q. There were some changes?

A. Yes, sir.

Q. Who made those changes, do you recollect?

A. I was just trying to think; I do not recollect how those changes were made at the time.

Q. Why were they made?

A. I do not remember that.

Mr. ALLEN: Does your question cover all the options?

Mr. GRESHAM: Yes.

The WITNESS: He said some of the changes.

Mr. GRESHAM: Refer to all of them.

Q. How was the voting power of the stock arranged?

A. I do not comprehend that question.

Q. Did the preferred stock have a voting power?

A. No, sir.

Q. Only the common stock?

A. Common stock.

Q. Was more preferred stock than common stock given the mill-owners?

A. I think not.

Q. You think they got the same amount of common that they got of preferred?

A. As I remember the options they were to be paid in one-third cash, one-third preferred and one-third common, and an additional one-third common as a bonus, so that really gave them two-thirds common and one-third preferred.

Q. What class elected the directory of which you were elected a member, which was elected soon after the company accepted your proposition?

A. It must have been the common stock, as the other, the preferred, had no voting power.

Q. Did you and your associates who financed the company have a majority of the common stock—that is, the voting stock?

A. I do not remember, but I think not.

Q. Did the mill-owners have a majority of that?

A. I think there was a majority of the stock outside of the stock held by the—your previous question whether there was a majority in the hands—by a majority of the stock outside, whom do you refer to?

397 Q. The parties who financed the company.

A. The parties who financed the company.

Q. Now, did those parties who financed the corporation put up any more than one million dollars on the securities of the company?

A. I don't know that they put up that much individually; there was a million dollars put up on the sale of the bonds.

Q. Either the parties who financed it, or including the parties to whom they delivered and sold the bonds, put up a million dollars?

A. Yes, sir.

Q. Have you any idea how much of the stock these parties got who agreed to take the bonds?

A. No, sir; I don't remember that.

Q. According to these orders issued by you on the Northern Trust Company, it appears that Samuel Untermeyer received four hundred and sixty-nine bonds; he has receipted for four hundred and sixty-nine bonds; do you know how much stock Mr. Untermeyer received?

A. No, sir; I do not.

Q. Did he pay anything for the stock that he received? Did he pay you anything for the stock that he received?

A. Not that I know of; he paid for the bonds.

Q. And you gave an order, and at the same time you gave this order for the bonds to Mr. Untermeyer, you also gave an order, did you not, on the secretary to issue to Mr. Untermeyer so much stock?

A. I don't remember. If the order was shown to me I could easily tell.

Q. You delivered the stock to him yourself personally, did you not?

A. That I do not remember; I do not recall whether I delivered it in person, the transactions were quite rapid at the time, a great many of them, and it is very hard to distinguish them in any possible way; it was three years ago.

Q. Now, have you refreshed your recollection any since the commencement of this suit?

A. No, sir; not a particle.

Q. Didn't you look the matter up when you signed your answer?

A. Well, I thought you meant since I was subpoenaed to give any testimony. Was that what you meant?

Q. No.

A. Oh, yes, I have looked it up as well as I could at the
398 time of filing my answer. I thought you referred to the time of my subpoena here.

Q. Now, these receipts show that you ordered 167 of these bonds delivered to Mr. John D. Hood. At the time you gave this order for the delivery of these bonds to John D. Hood did you deliver any stock, or give an order on the company for him to receive any stock?

A. Well, Mr. Wolf had charge of all the transactions in that connection, and it is impossible for me to give you the details.

Q. Then Mr. Wolf could give us the details?

A. I don't know what he could do; he had charge of the transactions at the time.

Q. Was Mr. Hood one of the parties who was in the financing of this corporation prior to its organization?

A. Not that I know of. In fact, I think not.

Q. When did you first learn that he was going to take 167 of the bonds?

A. I don't know that I learned it at all, excepting that I saw it there for me to deliver it to him.

Q. Who would draft these orders on the Northern Trust Company for the delivery of bonds?

A. It says here—I should say the people that countersigned them.

Q. Dupee, Judah & Willard?

A. Dupee, Judah & Willard, attorneys for the Columbia Straw Paper Company.

Q. Then Mr. Wolf had charge of drafting these orders, and all you did was simply to sign your name to them; was that about it?

A. Mr. Wolf, I should say, drafted these orders.

Q. And he would present them to you, and all you would do would be to sign your name?

A. Yes, sir.

Q. You did not order him to make the draft?

A. No, sir, he did all that.

Q. And you just merely carried out the arrangement which had previously been made?

A. Yes, sir.

Q. Now, by whom and through whom was this arrangement made that Mr. Wolf should distribute these bonds through you as a medium of distribution?

A. I think that is chiefly done from Mr. Untermeyer.

Q. Was there any written directions or written contract as to how it should be done?

399 A. As to that I do not know. I think Mr. Wolf was acting for Mr. Untermeyer in certain respects.

Q. Wasn't he acting for a syndicate composed of Mr. Untermeyer, Mr. Beard, Mr. Dupee, or some member of the firm of Dupee, Judah & Willard, who had agreed to take these bonds and finance this corporation?

Mr. DUPEE: And Mr. Sherwood.

Mr. GRESHAM: He hasn't testified that Mr. Sherwood agreed to take any bonds.

Mr. DUPEE: What do you mean by "syndicate"?

(Question read.)

Mr. DUPEE: Objected to because it assumes that Mr. Dupee had agreed to finance the corporation, and he did not agree to anything of the sort.

Mr. GRESHAM: He testifies that you agreed to take some of the bonds; I insist on an answer to the question.

(Question read again.)

A. I do not understand that there was any such syndicate as named there.

Q. Well, didn't you testify that these gentlemen had indicated, either verbally or otherwise, that they would take the securities of the company on its accepting your proposition?

A. As I said, I understood that they were going to subscribe for some of the bonds, but whether it was on acceptance of the proposition or not, or on any other condition, I do not know.

Q. But on the faith of that you made the proposition to the company?

A. No, sir.

Q. You did not make your proposition to the company without some understanding as to where you would get the money to make the cash payments on the options, did you?

A. The question was between Mr. Untermeyer, Mr. Beard and myself that the bonds could be placed.

Q. Well, whom did Mr. Wolf represent in this distribution of the bonds?

A. It is not altogether clear to me who he did represent.

Q. I am only getting your knowledge. Now these parties who received bonds had put up their money long before they received the bonds, and the money had been distributed through the Northern Trust Company on Mr. Wolf's orders to the mill-owners?

A. I think there were temporary receipts given for the bonds when they paid the money.

Q. Issued to the parties who put up the money on the bonds?

A. Issued to the parties who paid for the bonds.

400 Q. Who issued these temporary receipts?

A. They were issued through Mr. Wolf.

Q. Wasn't there some agreement in writing that Mr. Wolf should do these acts that he did, on behalf of somebody?

A. If there was, he must have possession of it, however he must know of it, I don't remember.

Q. You do not remember?

A. No, sir.

Q. You have no recollection of there being any such instrument in existence?

A. No, sir.

Q. And if you ever saw it you do not recollect it?

A. No, sir, the mill men were in a very great hurry to have the matter closed and to get their money, and it was very hurriedly done, in fact all interested were very anxious and very pressing.

Q. Now there is an order here for the delivery of five bonds to Mr. Charles A. Dupee. Did Mr. Dupee pay his money to Mr. Samuel Untermyer, and Mr. Samuel Untermyer deposit it in the Northern Trust Company, and then after the money was distributed to the mill-owners, did Mr. Charles A. Dupee present this temporary receipt to Mr. Wolf and Mr. Wolf deliver to him, that is Mr. Charles A. Dupee, this order on the Northern Trust Company signed by you?

A. I do not think Mr. Wolf would have delivered—

Q. I will ask you generally if that is not the way the business transaction was carried out?

(Previous question read.)

A. Mr. Dupee would have paid his money in all probability to Mr. Wolf and taken a temporary receipt for the bonds. Mr. Wolf would deposit the money with the Northern Trust Company to the credit of Mr. Untermyer, as his attorney-in-fact. When the bonds were ready for delivery Mr. Wolf would make this order, take up this certificate, I would sign it, and Mr. Dupee would go and get his bonds; that would be the way the transfer would be made as I recollect it.

Q. Now these transfers were made between January and May, 1893—now here is an order for seventeen bonds to be delivered to Eugene H. Dupee, dated October 24th, 1894.

Mr. DUPEE: You mean the receipts of them were between those dates?

Mr. GRESHAM: I say generally they were.

Q. Please explain why that was put out so late?

A. It is barely possible that Mr. Eugene Dupee retained his temporary certificate and did not take the bonds until this time; 401 this is a possibility, of course. This is simply for the delivery of the bonds after the temporary certificates were given.

Q. There are certain bonds that have never been delivered at all by the Northern Trust Company, are there not?

A. Not that I know of.

Q. Aren't there thirty-three bonds that have never been paid out at all?

A. If so, I don't know anything about it.

Q. You would probably know if it was so, wouldn't you?

A. I don't know that I would.

Q. They would have either been delivered to you or to somebody on your order?

A. The thousand bonds or certificates for the thousand bonds were all delivered.

Q. To you?

A. To me or my nominees, there are no bonds in the Northern Trust Company that belong to me in connection with the transaction that I know of.

Q. There might be bonds deposited there by some of the parties to whom they were issued.

A. Yes, that is possible.

Q. Now, your recollection is, that in the early part of 1893, after the organization of the company and acceptance of your proposition, the company issued to you or your nominees receipts calling for a thousand bonds?

A. I think so.

Q. And some of these receipts, as probably this one to Eugene H. Dupee, were held over a year or more before he applied for the bonds?

A. Quite possibly.

Q. Now, what about this two hundred thousand dollars; did you pay that into the treasury of the company?

A. Yes, sir.

Q. In cash?

A. Yes, sir.

Q. Where did you get this two hundred thousand dollars?

A. That was gotten from the proceeds of the sale of the bonds.

Q. About when did you pay it into the treasury of the company?

A. I think it was paid in different periods.

Q. Was that money ever deposited in the Northern Trust Company, this two hundred thousand dollars? Did it ever pass through the Northern Trust Company?

A. The checks given to the company were on the Northern Trust Company, and the company deposited the funds in the bank where it was doing business.

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Q. The checks you gave the company ?

A. Yes.

Q. Now, may I ask what parties gave you the money that you checked into the treasury of the company ?

A. Well, the money was given me by Mr. Wolf. Mr. Wolf made a check to me, which I endorsed to the company.

Q. That is, checks on this fund that Mr. Untermeyer had placed in the Northern Trust Company ?

A. Yes, sir.

Q. Was that part of the seven hundred thousand dollars, or six hundred thousand dollars rather, to be accurate, that you said Mr. Untermeyer—

A. I should say part of the million dollars.

Q. How much, then, was deposited by Untermeyer in the Northern Trust Company ?

A. All the money that was deposited there was deposited to his credit.

Q. How much ?

A. I should say it was the entire proceeds of the bonds.

Q. What were the bonds sold at ?

A. Par.

Q. Then there was a million dollars ?

A. I should say so ; I should presume so ; of course I do not know anything about that ; the money did not pass directly through my hands. Mr. Wolf would be able to tell that, of course.

Q. You had the means of knowing, didn't you ?

A. Yes, I presume so.

Q. Isn't it natural you would know, so long as you made the proposition to the company ?

A. I had sufficient faith in Mr. Wolf to believe he would do the thing honestly and properly, and did not worry myself about it.

Q. Well, then, as a matter of fact, this money was paid to, this two hundred thousand dollars, was paid to the Columbia Straw Paper Company by Mr. Wolf, checking on this fund which was deposited in the Northern Trust Company in the name of Samuel Untermeyer ?

A. That is my recollection of it, yes, sir.

Q. Now can you give us your recollection as to how much cash was paid the mill-owners, as refreshed by the testimony that you have given with reference to this two hundred thousand dollars ?

Mr. ALLEN : Objected to as having been gone over.

403 The MASTER : I suppose, Mr. Gresham, the instrument should be produced if its existence is shown, or absence accounted for.

Mr. GRESHAM : I am not asking him to state the contents of the instrument.

The MASTER : That is independent of the instrument.

Mr. GRESHAM : Yes, sir.

The MASTER : I think that is proper.

A. Mr. Wolf has that account I should think; I never kept a record of it, so it is impossible for me to answer the question.

Q. It was less than eight hundred thousand dollars, was it not?

A. You will have to refer to Mr. Wolf for that.

Q. Now I would like to ask you if some of these mill-owners were not paid by a note of the company, paid in part by a note of the company?

A. I think one of the mills received notes from the company in part payment.

Q. Do you recollect how much those notes aggregated?

A. My recollection is eighty-five thousand dollars.

Q. What mill was that, if you recollect?

A. The properties of the Newark and Coshocton mills.

Q. Now I will ask you if there were not a note given for fifty thousand dollars on the purchase of the Riverton mill?

A. I gave a note of fifty thousand dollars, or rather two of twenty-five thousand dollars, which were assumed by the company, and bonds that were contributed, loaned by some of the directors, were placed as collateral with the notes, the bonds owned personally by individuals, not by the company.

Q. Where were those bonds placed as collateral?

A. With the Rudgley national bank.

Q. Of Springfield?

A. Yes.

Q. So that then, in all one hundred and thirty-five thousand dollars in notes was given for the purchase of the mill properties?

A. There was one hundred and eighty-five thousand in all.

Q. You have only spoken of one hundred and thirty-five thousand?

A. Yes, in those cases. In the case of the Rhoads-Utter mill, there were notes given by myself which were assumed by the company, and mortgage given to cover the notes on the mill property, for fifty thousand dollars. Fifty thousand dollars in bonds were loaned by individuals and deposited with the Northern Trust Company to secure the bondholders.

404 Q. What individuals loaned these bonds?

A. Why, Mr. Untermeyer and Mr. Beard and M. Church, Doctor Higgins, Mr. Halladay, Mr. Frees and myself.

Q. What individuals loaned the bonds that were placed in the Redgley national bank at Springfield as collateral on the properties of the Riverton mill by the company with the notes given by the company when the Newark and Coshocton mills were sold, the forty-five thousand of bonds placed as collateral by individuals?

A. Individuals contributed one hundred and forty-five thousand dollars of bonds to be used for that purpose.

Q. What individuals?

A. The individuals that I have already named.

Q. And these were all men in the financing of the company?

A. No, sir; they were not.

Q. Well which were men who were?

A. Some of them were, not all of them.

Q. Which ones were not?

A. Mr. Frees and Mr. Higgins.

Q. When did Mr. Higgins come in?

A. Into what?

Q. Into the company?

A. He came in by reason of the purchase of his property.

Recross-examination by Mr. ALLEN:

Q. Explain a little further, Mr. Stein, what was done in the cases of these Newark and Coshocton, Rhoads-Utter, and Riverton mills in the way of security to the company?

A. One-third of the purchase price of their properties was paid them in cash in the same way as to other mills; the stock, preferred and common, represented the balance of the amount which would have gone to them if they had gone in on the regular terms. That was placed either in the treasury of the company or in somebody's hands as trustee for the company.

Q. As a protection, as against the notes assumed by the company?

A. Yes, sir.

Q. So that in these three cases, as I understand it, the company was protected in its obligations which it assumed by bonds to the extent of one hundred and forty-five thousand dollars pledged by individual directors, and by stock to what amount? Do you remember?

A. Whatever the proportion of that stock was, I do not
405 remember, whatever they would have been entitled to had they taken stock.

Q. In the proportions of one-third preferred and twice the amount of common stock of the company?

A. Yes, sir; I think it was that; perhaps a little greater amount, because one mill was purchased for cash outright, and that stock was placed back into the treasury.

Q. I will ask you about the million dollars which you say was paid into the bonds; do you know positively whether that entire amount was deposited in the Northern Trust Company?

A. No, sir; I do not.

Q. Do you know positively whether the two hundred thousand dollars of working capital was drawn through the Northern Trust Company and paid to the Columbia Straw Paper Company? Or whether it came from the bonds but not through that bank?

A. I think it came through that bank, but presume from the proceeds of the bonds.

Q. It would come from the proceeds of the bonds?

A. Certainly, but not through that bank.

Q. Who put up the preferred and common stock in the case of these three mills which you said were transferred to the company, encumbered?

A. That was put up from among these gentlemen that put up the bonds, Mr. Frees and Doctor Higgins.

Q. I understand you that they had no connection with the financing of this company, or any connection with it prior to the organization?

A. None whatever; simply gave their options, options on their properties, and were paid for their properties.

Q. Each of them were interested in properties?

A. Yes, sir; Mr. Frees in the Whitewater mill and Doctor Higgins in the Vandalia, unless there was some understanding between Mr. Sherwood and Doctor Higgins. He visited him several times to get his option, but nothing that I know of. I never met Doctor Higgins until the company was organized.

Q. In speaking of the men who had negotiations and by whom negotiations were conducted, did you mention a Mr. Richardson?

A. No, sir.

Q. Had he anything to do with the negotiations connected with the purchase of these plants or options?

A. Yes, he had something to do with it.

Q. What was his name?

A. James C. Richardson.

406 Q. Where does he live?

A. He lives in Ohio.

Q. What had he to do with the negotiations with reference to securing options on these plants?

A. He assisted, with Mr. Sherwood, in securing some points.

Q. Do you know that of your own knowledge?

A. So Mr. Sherwood informed me; I will say to my own knowledge.

Q. Referring to the options on the properties in these mills, you stated you desired to make some explanation as to the last time you saw them placed; what did you wish to say on that subject?

A. I stated on Saturday that the options were left with Mr. Wolf some time in August or September of 1892; but it was later than that; it must have been some time along in November or December.

Q. Of 1892?

A. 1892, later in the year.

By Mr. DUPEE:

Q. You were asked, Mr. Stein, in regard to thirty-three bonds said to be now in possession of the Northern Trust Company. It has been stated in evidence here; I will read this to refresh your recollection possibly, that these bonds were loaned by the owners of the straw paper company as collateral to sundry purchase-money mortgages which were already on some of your plants. Have you any knowledge on that subject?

A. In reference to the thirty-three bonds?

Q. Yes.

A. I should judge from the amount that these bonds, thirty-three bonds, were the bonds that were loaned by the individuals to cover the mortgage on the Rhoads-Utter mill.

Q. That were collateral of that loan?

A. Collateral on that loan, yes, sir; that would be my impression.

Q. Who were the attorneys for the Columbia Straw Paper Company after its organization and for some considerable time?

A. As I remember it, Messrs. Guggenheimer & Untermyer and Dupee, Judah & Willard.

Q. I think you have stated that you do not remember when Dupee, Judah & Willard ceased to be attorneys for the company?

A. I do not recollect the exact date.

Q. Who examined, if anybody, the titles to the property purchased by the company, if you know?

A. Mr. Wolf, in the office of Dupee, Judah & Willard.

407 Re-redirect examination by Mr. GRESHAM:

Q. Do you know that Harry W. Dickerman, one of the cross-complainants, and defendant here, was a stockholder of record in the company?

A. That is my recollection, yes, sir.

Q. And that James T. Richardson is?

A. There is quite a little transfer of his stock; I am not quite sure whether he is a stockholder at present or not.

Q. Well, he was?

A. I think he was.

Q. Probably when was he?

A. I do not know; I think he is a stockholder, though. I think I refer to it in my answer, if you will take that as an answer.

Q. Then your answer to my question would be that Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois, Henry S. Carroll, for himself and the Clarksville Paper Company, Fred J. Diem, Freeman Graham, Jr., Julius Graham, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James T. Richardson, are holders and owners of the respective amounts as claimed in their answer and admitted in your answer to the cross-bill?

A. To the best of my knowledge, yes, sir.

Re-recross-examination by Mr. ALLEN:

Q. Referring to answer, on pages 11 and 12, Mr. Stein, will you state how James C. Richardson became a holder of stock?

A. By purchase of the Monroe paper mill.

Q. You mean by the sale?

A. By the sale, yes.

Q. When was this? Was that one of the properties acquired by the Columbia Straw Paper Company?

A. Yes, sir.

Q. Do you remember whether the option for the purchase of Mr. Richardson's mill was upon the same basis you have stated, one-third cash, one-third preferred stock and one-third common, and an equal amount of stock, common stock, equal to one-third as a bonus?

A. I think it was.

408 (Objected to by counsel for defendants on the ground that he did not examine the witness, on direct examination, about the option.)

The MASTER: If the question relates to the same subject in respect to which the witness has already been interrogated, I think it is proper.

Mr. GRESHAM: No, sir, I merely asked him if he was not an owner and holder of the stock.

The MASTER: I refer to the early part of his examination. Your examination is based upon the idea, upon the fact, that it related to a matter that was not expressed in a contract but to the same subject, but the name of Mr. Richardson was not mentioned. Now I understand Mr. Allen refers to the same subject, but includes Mr. Richardson's name in connection with it.

Mr. ALLEN: That is the idea.

The MASTER: I think that is proper; it does not refer to the contents of the written document; go ahead.

Mr. ALLEN:

Q. How did Mr. Dickerman acquire his holding, if you know, Mr. Stein?

A. I think it was by transfer from the Grahams.

Q. Who are the Grahams, what are their names?

A. Freeman and Julius.

Q. How did the Grahams acquire their stock?

A. By the sale of their paper mill properties.

Q. On what basis was the stock issued to them?

A. One-third cash, one-third preferred, one-third common and an additional one-third as bonus.

Q. Do you know who Mr. Dickerman is, what his business is?

A. I think he is connected with the Second national bank, if I remember correctly.

Q. Are the Grahams connected with him in any way?

A. I do not know as to that.

Q. Do you know anything about whether the Grahams hold their stock now or not, or did at the time these proceedings were instituted?

A. I think they held part of their stock at that time.

Q. Do you know how Henry S. Carroll and E. P. Hooker acquired their stock?

A. Yes, sir.

Q. In the same way?

A. By the sale of mills, yes, sir.

Q. And on the same terms?

A. Yes, sir.

Q. Did they buy any of the bonds of the company?

A. Yes, sir.

409 Q. Did they receive any of the stock with their bonds?

A. I think so.

Q. You have stated in your answer to the cross-complainants that Henry S. Carroll bought ten bonds and paid one thousand dollars

therefor and received twenty shares of preferred stock and forty shares of common, in addition, is that correct?

A. I should say so.

Q. You have also stated that E. P. Hooker bought ten bonds and paid ten thousand dollars?

A. Yes, sir.

Q. That E. P. Hooker bought four bonds and received eight shares of preferred stock and sixteen shares of common, is that correct?

A. Yes, sir, I should say so.

Q. F. J. Diem, do you know how he acquired his stock?

A. Yes, sir.

Q. In what way?

A. By the sale of paper mill property.

Q. On what basis?

A. Same basis, one-third cash, one-third preferred, one-third common and an additional one-third of common.

Q. Mr. Richardson acquired his in the same way, I understood you to say?

A. Yes, sir.

By Mr. DUPEE:

Q. I will ask you subject to objection, if it is not a fact that Harry W. Dickerman, Henry S. Carroll, Fred J. Diem, Freeman Graham, Jr., Julius Graham, E. P. Hooker and James T. Richardson did not at a meeting of the stockholders, held for the organization of the Columbia Straw Paper Company and the purchase by it of the securities which have been referred to, vote in favor of a ratification of the acts of the company in the purchase?

(Objected to by counsel for defendants for the reason that the document which would show this is in the possession and under the control of the complainants and the defendants and we have requested the production of the books and records in this connection.)

By Mr. GRESHAM:

Q. Now Mr. Stein, you said that you are able to recollect that Mr. Diem and Mr. Richardson and these cross-complainants, just how much stock they got?

Mr. ALLEN: He did not testify to how much.

Mr. GRESHAM: But you are not able to testify to how much Mr. Untermeyer and Mr. Dupee got?

410 A. I testified to the basis and not to the amount, and from refreshing my memory by reading my answer to the cross-bill.

Q. I will ask you why you cannot recollect the basis on which Mr. Untermeyer and Mr. Dupee and these gentlemen who held bonds, acquired their bonds and their stock?

A. Simply because I have nothing to refresh my memory from. I asked you if you would let me refer to the cross-bill, which I did, and that is my recollection when I took it from there.

Q. Why doesn't it refresh your recollection as to Mr. Untermeyer and Mr. Dupee, and these other gentlemen?

A. I do not know as I state anything in there as to the stock they received and the circumstances under which they received it. I may have had no means of refreshing my recollection, it is something that transpired a good many years ago.

Q. Now you swore to your answer to the cross-bill. Could not you obtain information, could not you refresh your recollection as to how Mr. Untermeyer acquired his stock and Mr. Dupee and those other gentlemen, if you were given time?

(Objected to by counsel for complainants as being a conundrum.)

A. I do not know how I would go about it or where I could get it.

Q. Where did you get the information on which you based your answer with reference to Mr. Diem and Mr. Richardson and the other cross-complainants?

A. I think I referred to the stock list.

Q. Was the stock list here in Chicago at that time, at the time you got the information on which you framed your answer, the 6th day of July, 1894?

A. I think there was a list of stockholders here at that time, not the book, but a list of stockholders here.

Q. Is that list here now?

A. I do not know that.

Q. Where was that list?

A. I think that list was in our office.

Q. Can you make a search for that list and bring it here? And could you bring it here this afternoon?

A. I will make a search for it, but I do not know that I can bring it here this afternoon, but I do not know where to look for it.

Q. Was it in your possession as an officer of the company at that time?

A. I do not think it was as an officer of the company, it was about the office for some time.

411 Q. You are still treasurer of the company?

A. Very still.

Q. Then it would be in your possession as an officer of the company?

A. No, sir; it would be in the possession of the secretary of the company, I should think; there is a list about there somewhere, I may be able to find it.

Q. Is there a list of the bondholders?

A. No, but I think there is a transcript of some sort of a list from the stock ledger, or something of that sort?

(Signature waived by agreement of counsel.)

Mr. GRESHAM: I want to make a couple of motions which I think I made the other day.

I will make a motion upon Mr. Wolf, who has become a party to this suit, represented here by counsel, to produce the options which are shown to have been in his possession at the time of the organization of the company, this afternoon, for the purpose of being used in this case, the options which were taken from the various mill-

owners for the mills subsequently acquired by the Columbia Straw Paper Company.

The MASTER: Is Mr. Wolf a party to this suit?

Mr. DUPEE: No, sir; he is not a party to this suit, and I do not represent him, and I will say besides that, Mr. Wolf left for New York last Monday, a week ago today, on account of the severe illness of his father, and I have not seen or heard from him since. I have no authority to speak for him.

The MASTER: I suppose that—without interrupting you, Mr. Gresham—that that motion should be made, should be directed either to his attorney, if he is represented in this proceeding, he not being present, or in connection with his examination; that is, I do not see how we can get at him in any way.

Mr. GRESHAM: I understood that Mr. Dupree did appear for him.

Mr. DUPEE: I was not aware of it.

Mr. GRESHAM: I will also make another motion on the defendant company to produce the stock ledger which was here in Chicago at the time the bonds were issued, and which it does not appear that the statutes of New Jersey require to be kept at the home office of the company.

And I will also make a motion on the defendant company requiring a production of the copy which it had here in Chicago, of the records of the stockholders and the record which was transcribed here in Chicago and sent to where the main and principal office of the company was, and it has been shown by the testimony to have been sent from here to Samuel H. Guggenheimer, secretary, in New York.

Recess until 2.30 p. m.

2.30 P. M. MONDAY, *December 30, A. D. 1895.*

Continuation after recess.

Present: Counsel same as last.

It is stipulated between counsel for complainants and for the defendants, Dickerman *et al.*, represented by Mr. Gresham, that the direct testimony of Mr. Sherwood shall be taken this afternoon;

That the cross-examination of Mr. Sherwood shall take place Thursday morning, January 2, 1896, at ten o'clock in the forenoon;

That counsel for said defendants shall have Thursday and Friday, January 2d and 3d, in which to take the testimony of Mr. Henry M. Wolf, if Mr. Wolf is in the city on those days, if he is not, two days shall be designated for the same purpose at the earliest practicable time, and also for taking the testimony of Mr. John G. Hood;

Also that said defendants shall have until said Friday to put in such books and papers and records of the company as they can obtain.

That the said defendants shall apply for no further extension of their time to take proofs upon the matters referred to the master, except that they may apply to the court for an extension of their time, to enable them to take depositions in New York or New Jersey in order to obtain such records, books and papers of the Columbia Straw Paper Company, as they cannot otherwise obtain.

Nothing herein, however, to be construed as in any way a consent on the part of the complainants to such extension of time to defendants beyond said January 3d.

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Testimony of J. B. Sherwood.

JOHN B. SHERWOOD, called as a witness on behalf of certain defendants, being first duly sworn, was examined in chief by Mr. Gresham and testified as follows:

Q. Please state your full name.

A. John B. Sherwood.

Q. What is your occupation, Mr. Sherwood?

A. Practicing law.

Q. What is your age?

A. Forty-two.

Q. Where do you reside?

A. Indianapolis, Indiana.

Q. How long have you resided in Indiana?

A. In Indiana?

Q. Yes.

A. Forty-two years.

Q. What connection, if any, did you ever have with the organization of the Columbia Straw Paper Company?

A. Prior to February, 1892, I had been employed and engaged by certain gentlemen connected with the American Straw Board Company in the formation of the corporation and obtaining the options on all the straw wrapping paper mills and plants in the country, amounting to seventy, and in 1890 the Baring panic struck us and it fell through, and I had these options extended until a period in 1891, and then it was given up; and in February, 1892, Mr. E. G. Church, living at Sterling, Illinois, and owner of the Rock Falls paper mills, came to me in Chicago and introduced to me Mr. Emanuel Stein—

Mr. DUPEE: What year was that?

The WITNESS: In February, 1892.

A. (Continuing:)—and stated to me in Mr. Stein's presence that Mr. Stein had said that if we could get these options again, he could secure the money down in New York to form a corporation which would include all these seventy paper mill plants. I then—I was living at Lafayette, Indiana, at the time—and on the suggestion of these parties, I met them again at the Auditorium hotel, and we went over figures, and on the second trip, or third trip, rather, to Chicago I mean, and Mr. Stein—I would say this, Mr. Church asked me in the beginning if I was bound to anybody in the matter, and I said I had been with Mr. Trebein and Mr. Richardson in a deal, and I felt that if I were called on to go into any deal I would want to have them in, as I said I would stand by them, and they
414 had said they would stand by me; consequently, on the third trip I met Mr. Stein, Mr. Church, John B. Halliday—he is a great friend of Mr. E. G. Church. Mr. Richardson was not there;

he was expected, and I expressed some surprise he was not there. That meeting was held at the Wellington hotel, in one of the back rooms, and I had a list of my options with me, and we went over the prices and they gave their views; and after that I made up a list of the options on these seventy mills, including a private statement of the cost of manufacturing, and the prices for the past years in the Chicago market and other markets; and I also had a general statement of the manufacturers generally throughout the country. I gave these two to Mr. Stein, and I have copies of them now with me if you want them, that I made for that very time. These statements were taken by Mr. Stein down to New York to use, and with Mr. Beard—

Q. Is that Philo D. Beard?

A. Philo D. Beard, and Mr. Thomas T. Ramsdell, of Buffalo; he took these papers down there with him to show. After that, I met in the Pullman building, in Mr. Stein's office, Mr. Trebein, Mr. Church and Mr. Stein, in company with Mr. Philo D. Beard and Mr. Ramsdell, and we had some little controversy as to what I was to get in the matter. Mr. Beard and Mr. Ramsdell stated that they wanted to do everything through Mr. Stein. Mr. Stein had already made his proposition to me running one way and another, and finally, June 16, 1892, I met Mr. Stein and prevailed upon him to give me twenty-five thousands dollars of the common stock.

At that time we had already talked of the amount of stock to be in the corporation, so I knew, consequently, what twenty-five thousand dollars of stock was worth.

Q. Now, did you use the options that you spoke of that you acquired in 1890, or did you take new options, using the old options as a basis?

A. Mr. Stein took those figures down to New York, and when he came back, about the first of July, he said that the parties down there wished new options entirely to be taken, and he produced an option which he said Mr. Samuel Utermeyer had drawn, and it was the only kind of an option that they would accept; he told me at that time that Mr. Beard, and the firm of Guggenheimer and Utermeyer were going into this deal, that they were going to put up the money for themselves and their friends, and that everything had to be done the way Mr. Samuel Utermeyer wanted, and that this was the kind of option he wanted. There were two forms, one was for corporations, and the other was for individual firms and partnerships, the one for corporations being covered with buff or
415 orange paper, and the other with yellow or lemon-colored paper, and I objected to certain—

Q. Well, they adopted the form of option which provided that the option be taken in the name of an individual, did they not?

A. They adopted this option which was in two forms, one for corporations and one for individuals, but the substance of the option was the same in each case.

Q. How were the options taken, in the names of individuals, Beard & Ramsdell, were they not?

A. They were all made running to Thomas T. Ramsdell and Philo D. Beard.

Q. Between what dates were the options taken?

A. Between the first day of July, 1892, and the 31st day of October, 1892, although there were some options that were not closed up, fully closed up, until after that, notably the options of the Coshocton and Newark, Ohio, mills.

Q. How many mills were options taken on?

A. Well, at that time I did not know. It was agreed and it was the understanding that options should be taken on all seventy of the mills, they so said to me, and it was the only basis on which I would have gone in and taken stock, for the reason that if all the mills were not in the thing could not be a success. The answer of Mr. Stein was that they had gotten substantially all. In Illinois, in which there were eighteen or twenty, the options were taken by E. G. Church; he also had Iowa.

Q. You had nothing to do with taking options the second time?

A. Mr. Trebein had Ohio and I had Michigan.

Q. Who had Illinois?

A. Mr. Church had Illinois; then Mr. Trebein and I joined Mr. Church in getting certain options, for instance, the option at Vandalia, Illinois, was obtained by all of us, Mr. Church going there first and I afterwards, meeting Mr. Church there with Mr. Trebein, and also Mr. Church and Halliday had been there together, and I had been at work in Ohio in getting options there, and Mr. Trebein telegraphed me to come and meet him at Columbus in regard to the Sandusky mill, and then go to Coshocton with him, about the Coshocton mill, and when it came to the Hartford City, Indiana mills, Mr. Stein, Mr. Church, Mr. Trebein and myself were all there, at Fort Wayne; I took the original option and sent it down to Mr. Beard; that is, the Hartford City mill.

Q. Did you ever meet the firm of Guggenheimer & Untermeyer in connection with the proposed organization of this company?

416 A. Yes, sir.

Q. When did you first meet them?

A. I met Mr. Samuel Untermeyer first about the 10th day of December, 1892, in the office of Dupree, Judah, Willard and Wolf, at that time the name was Dupree, Judah & Willard. Mr. Wolf was a partner, at least his name appeared on the letter-heads of the firm.

Q. Who is this Mr. Samuel Untermeyer?

A. Mr. Samuel Untermeyer is a member of the firm of Guggenheimer & Untermeyer, New York, now Guggenheimer, Untermeyer & Marshall.

Q. Were any meetings ever held in the office of Guggenheimer & Untermeyer in New York?

A. Yes, sir, a great many, but I was not present.

Q. Did you ever meet Mr. Guggenheimer?

A. I never met him.

Q. Do you know him by sight?

A. No.

Q. Did you know how many mills were in, came into the organization of the company that was organized?

A. No, sir.

Q. What was your understanding as to how many?

A. My understanding was the whole seventy were to be in.

Q. What conversations, if any, did you ever have with Mr. Wolf?

A. I met Mr. Wolf for the first time about the fifteenth day of November, 1892, and he invited me that evening to meet him, to go with him to the University club and to take dinner there to talk matters over. I was very anxious to meet Mr. Wolf. I had heard of him through Mr. Stein, and Mr. Stein had told me that Guggenheimer & Untermeyer of New York would not do anything here unless Mr. Wolf gave his consent to everything, and that he thoroughly understood the business.

Mr. DUPEE: The last part, the last several lines of the evidence is objected to as being purely hearsay.

A. (Continuing:) I met Mr. Wolf that night at the University club, we took dinner together. I had not been able to get information from Mr. Stein and Mr. Trebein and these gentlemen as to the details, they seemed to be trying to hold back, and I made up my mind——

Mr. DUPEE: So much of the testimony as states that these parties seemed to hold back is objected to as incompetent testimony.

A. (Continuing:) And one thing I wanted to know of Mr. Wolf was where the money was coming from. Mr. Wolf said to
417 me that the firm of Guggenheimer & Untermeyer was very wealthy, were well known in New York, that they were engaged in the business of forming these corporations, that they had put together eight hundred millions of capital in the shape of corporations, that they had never failed on anything, and my recollection is that he named over to me some of the large corporations they had formed, and he said that they had failed in none and would not go into this and fail in this, and therefore they were very particular how they were doing it, and had ample capital to put in. I wanted to know how much they were going to put in, and he told me then that Guggenheimer and Untermeyer themselves were going to put in in the neighborhood of three hundred thousand dollars, and that they had seen their friends down there and that their friends were going to put in about two hundred and fifty thousand dollars, so I knew then where five hundred and fifty thousand dollars was coming from, and I asked him where is the rest of this, the million dollars' worth coming from, and he told me the Beard element in Buffalo were to put up two hundred and fifty thousand dollars. Then there would be eight hundred thousand dollars, and, he said, the firm of Dupee, Judah & Willard are going to take sixty thousand of these bonds. Then I had up to eight hundred and sixty thousand, and I wanted to know where the rest was coming from. He said that would be taken, that there would be no trouble about that, but did not seem to know at the time where it was coming from.

Afterwards I saw Mr. Stein and asked him about it, and I guess they had a good deal of trouble about getting the last one hundred and forty thousand—

Mr. DUPEE: So much of the testimony as consists of guesses is objected to, and I make a motion to strike it out.

The WITNESS: Strike that out.

A. (Continuing) Afterwards I saw Mr. Stein and he told me that they were having some trouble in getting the other hundred and forty thousand dollars, and Mr. Trebein also told me the same thing, and that they were going to try to get some of the mill men to take it.

Q. Do you know how many plants went into the—

A. In that talk I had with Mr. Wolf I told him about these seventy mills and told him that I could not find out from Mr. Church what options he had got in, or from Mr. Trebein, and he said that they had got in substantially all, but did not give me the number, and I never saw a full list of these mills that had been taken in until this foreclosure suit was brought and I found it in the bill.

Q. Did you ever have any knowledge of the contents of the mortgage before the suit to foreclose was brought?

418 A. I never heard of it until I learned of it from the bill and the ancillary bill filed at Indianapolis.

Q. Did you ever see a copy of the written proposition that Mr. Stein made to the company to sell to the company the properties on which he held options?

A. I never saw that proposition, and I never knew a thing of its being made until I found it in the bill along about the first day of February of this year. That was one thing I asked Mr. Stein in regard to, and Mr. Wolf, how we were going to do this thing, and I could get nothing from him; Mr. Stein once said in his conversation that they did not want the mills to know about the exact workings, all they wanted them to do was to take this stock; and when I started to get these options, I told the mill men there were to be seventy mills, and it was the understanding that the seventy mills being in, would absorb this stock.

Q. The four millions stock?

A. The four millions stock.

Q. Well, did you ever learn how much the thirty-nine mill-owners got in stock who did go into the corporation?

A. I learned that since this suit was instituted to foreclose this mortgage.

Q. You may state how much stock they got.

Mr. DUPEE: I want to caution the witness. You understand it as well as I do, that you are to state it of your own knowledge and not hearsay.

A. The amount of cash necessary (referring to memorandum) to pay for these mills, was seven hundred and sixty-six thousand dollars.

Q. How much stock?

A. Six hundred and twenty-nine thousand of preferred, and one million, two hundred and fifty-eight thousand of common stock.

Q. Do you know what became of the balance of the common stock—that is, over and above what went to the mill-owners, which aggregated one million, two hundred and fifty-eight thousand, aside from what went to the mill-owners?

A. Yes, sir; I know what became of it.

Q. What was the aggregate amount of the common stock that did not go to the mill-owners?

A. The difference between three million dollars and one million, two hundred and fifty-eight thousand of common stock.

Q. That would be one million, seven hundred and forty-two thousand common, wouldn't it?

A. One million, seven hundred and forty-two thousand.

Q. What became of that one million, seven hundred and forty-two thousand of common stock?

419 A. That went into the hands of Mr. Beard and his friends in Buffalo, Guggenheimer & Untermeyer and their friends in New York, Dupee, Judah, Willard & Wolf and their friends in Chicago, and Mr. Stein.

Q. Do you know how much went into the hands of Mr. Beard and his friends in Buffalo?

A. Nine hundred and fifty-seven shares of preferred, and four thousand, four hundred and forty-one of common went to him and his friends.

Q. Do you know how much went to Messrs. Guggenheimer and Untermeyer and their friends, both common and preferred?

A. To Messrs. Guggenheimer and Untermeyer themselves, eight hundred and fifty-nine shares of preferred stock, and four thousand three hundred and fifty-seven shares of common stock, and their friends four hundred and twenty shares of preferred, and eight hundred and forty-one of common. To Messrs. Dupee, Judah, Willard and Wolf, and Mr. Stein—

Mr. DUPEE: Can't you separate them?

The WITNESS: Yes, I can.

A. (Continuing.) To Messrs. Dupee, Judah, Willard and Wolf, and their friends —

Mr. DUPEE: Can't you separate it further, leave out their friends?

The WITNESS: Yes, if you want me to.

Mr. DUPEE: Yes, do that.

A. (Continuing.) To Dupee, Judah, Willard and Wolf as a firm, one hundred and seventy-two shares of preferred stock, and five hundred and fifteen of common; to H. M. Wolf as trustee, one thousand one hundred and ten shares of preferred stock, and two thousand two hundred and thirty-two shares of common stock. To Mr. Stein, two hundred and seventy shares of preferred, and two thousand three hundred and seventy-seven shares of common. Mr. Stein's stock, on the books, shows that it is divided up as follows: To Julia Stein, his wife, forty shares preferred, and two hundred and thirty to him personally, and to Julia Stein, his wife, nine

hundred and fifty shares of common, and to himself one thousand four hundred and twenty-seven shares of common.

Q. Where did you get your two hundred and fifty shares, and when?

A. I got my two hundred and fifty shares of stock from Mr. Emanuel Stein, and I did not get that until June, 1893.

Q. Did you get any preliminary receipt or certificate for it?

A. No; in June, 1893, he delivered to me a printed certificate, one of the temporary certificates which was used by all of them, all the stockholders prior to—

Q. Now at that time you did not know that seventy mills did not go into this corporation?

A. I did not know it.

Q. What are you able to state as to the knowledge of the cross-complainants, or rather the defendants herein, Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois; Henry S. Carroll for himself and the Clarksville Paper Company; Fred J. Diem; Freeman Graham, Jr.; Julius Graham; E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf; and James C. Richardson; as to whether they knew whether the full seventy plants were or were not at that time in this corporation?

A. I know absolutely that they did not.

Q. Know that the seventy mills were not in?

A. That the seventy mills were not in.

Q. How long after the organization of the company and the taking of the thirty-nine plants in was it, that these defendants I have named learned that only thirty-nine plants went in?

A. Well, the way the knowledge was obtained was after the Columbia Straw Paper Company got to running and had been running some months, it was found that this mill and that mill was not in, but today there is no means of knowing what mills are in and what mills are out except as shown by this mortgage.

Q. Unless the treasurer or secretary or books of the company were produced?

A. Yes.

Q. What information, if any, have you as to what consideration passed to the company from Mr. Stein and the parties associated with him for the preferred and common stock other than the stock of the company which was used in part payment for the mills and delivered to the mill-owners?

A. There was not one dollar of consideration.

Q. What information, if any, have you of there being in existence a contract between Stein and Wolf and the parties who were to finance the corporation as to the method by which the money was to be subscribed and the securities of the company distributed?

A. After the thirty-first day of October, 1892, the day that Mr. Stein accepted the options, we had a number of conferences here in Chicago, and especially were they frequent the latter part of November and the month of December, 1892, and on one occasion, in Mr. Wolf's room at the office of Dupee, Judah, Willard

421 & Wolf, Mr. Stein asked Mr. Wolf in my presence, so that I could hear him, to please hand to him the private agreement, he wanted to examine it, and Mr. Stein took it from Mr. Wolf and went over to the window to read it. I did not see the contents of it.

Q. About when was that do you state?

A. That was on the 10th day of December, the 10th, 11th or 12th, along in there. On that occasion Mr. Untermeyer was there and that was the day we talked about the organization of the company and had in a board of directors that I supposed was to be the board of directors, and they were talked of as the new board of directors of the company, the gentlemen themselves understood they were to be.

Q. What gentlemen were they who understood they were to be the board of directors?

A. These gentlemen I am telling you, and Mr. Frees, Mr. Higgins, Mr. Church, Mr. Stein, Mr. Beard and Mr. Halliday. The other director, Mr. Heppenheimer, being of New Jersey, was not there, and he was the New Jersey director, and on that occasion there was some talk of two more directors, and they were to be Mr. Robertson, of the Lafayette mill, and Mr. Richardson, of the Monroe, Michigan, mill, and Mr. Robertson was present on that occasion and sat in with these gentlemen as one of the members of the board of directors.

Q. Were you ever advised in writing by any of the promoters of the company as to who the first board of directors was to be?

A. Yes, sir.

Q. By whom were you so advised?

A. I was in correspondence with Mr. Stein all the time, and also with Mr. Trebein in regard to this affair, and also with Mr. Church, and I was wanting to know how it was getting along, and on the 17th day of October, 1892, I think that is the date, in answer to a letter of mine, Mr. Trebein wrote me—

(Counsel for complainants objects to putting in evidence the statements of the witness in relation to the contents of a written instrument, on the ground that the letter itself should be produced.)

The WITNESS: I have the letter at my home in Indianapolis.

Mr. GRESHAM: I will ask you to produce that letter here next Thursday, so that it may go in evidence.

Q. Now I will ask you if it was stated in that letter—merely for the purpose of expediting the examination—

Mr. DUPEE: I would like the letter to state for itself.

Q. (Continuing)—as to who the first board of directors should be?

(Objected to by counsel for complainants.)

422 The MASTER: So long as it appears that the witness has the letter.

Mr. GRESHAM: We will promise that he produce the letter Thursday, or else his testimony in relation to it can be stricken out.

Mr. DUPEE: I do not consent to that, the letter can speak for itself.

Mr. GRESHAM: You consent to our introducing the letter on Thursday morning and questioning him about it?

Mr. DUPEE: Yes, to the presenting the letter; I do not consent to your questioning him, you can have him produce the letter as the letter he referred to.

Mr. GRESHAM: Well, we will do that.

Q. I will ask you if you ever had any difficulty in getting into the meetings of the stockholders here in Chicago after the company was organized?

A. There were no meetings of the stockholders held here.

Q. I will ask you if you were ever refused permission to examine the records of the meetings of directors and stockholders here in Chicago after the company was organized?

A. I came to Chicago a number of times in the year 1893 to see Mr. Beard; I wanted to know the value of the stock and asked him in regard to it, and said that I would like to see the books, and he said at that time it was not necessary, that he was going to have some experts examine them and he would send to all the stockholders a full statement of the condition of the company and that that was all that was necessary, and I better wait till I got that. I wrote for it a number of times but never got it, although he did have an examination made.

Q. Were you ever refused permission to see the stock register and the bond register?

A. Oh, I never made any attempt to see them.

Q. Do you know how many of the bonds the firm of Guggenheimer & Untermeyer agreed to take?

A. I do not know any further than as detailed in that conversation with Mr. Wolf.

Q. Do you know who were their friends or associates in taking part of the bonds of the company?

A. In that conversation with Mr. Wolf he told me that Messrs. Guggenheimer & Untermeyer had a large clientele who went into these things with them on their advice, and that they were seeing their friends and had seen them, and since this case was commenced, and I had occasion to look into it, I have obtained a copy of the stock book, showing all the stockholders, and a copy of the bond register, showing each and every bond held and the number,

423 and from these two, together with the examination of Mr. Heurtley here the other day, I am able to say who the friends of Messrs. Guggenheimer & Untermeyer are.

Q. Can you state them?

A. Yes, sir.

Q. And who took bonds originally?

A. Yes, sir. Bonds numbered 151 to 160, originally delivered and issued to Mr. Samuel Untermeyer were by him transferred to Mr. William Krauss, 659 Broadway, New York, and at the same time he received his stock in proportion, in the manner in which

Mr. Stein testified this morning, of twenty and forty, receiving twenty shares preferred and forty of common *common* stock, and this also shows on the books of the company.

Mr. DUPEE: For each bond?

The WITNESS: Yes.

A. (Continuing:) Bonds numbered 161 to 165, five bonds, were issued to Mr. Samuel Untermeyer and by him transferred to Mr. Emanuel Lauer, 659 Broadway, New York, together with ten shares preferred and twenty shares of common stock. Bonds 166 to 168, being three bonds, were originally issued to Mr. Samuel Untermeyer and were by him transferred to Max Naumberg, 659 Broadway, New York, at the same time with six shares of preferred and twelve shares of common stock.

Bonds numbered 169 to 173, being five bonds, originally issued to Mr. Samuel Untermeyer, were by him transferred and delivered to Charles Seham, 1074 Madison avenue, New York city, together with ten shares of preferred and twenty shares of common stock.

Bonds numbered 174 to 183, originally issued to Mr. Samuel Untermeyer, were by him transferred and delivered to Richard Seidenberg, 47 Mercer street, New York city, together with twenty shares of preferred and forty shares of common stock.

Bonds 184 to 193, being ten, originally issued to Mr. Samuel Untermeyer, were by him transferred to Mr. Siegfried Rosenberg, 104 Bleecker street, New York city, together with twenty shares of preferred and forty shares of common stock.

Bonds 194 to 198, being five bonds, originally issued to Samuel Untermeyer, were by him transferred and delivered to Lazarus Nordlinger, 137 Duane street, New York city, together with ten shares preferred and twenty shares common stock.

Bond 199, one bond originally issued to Samuel Untermeyer, was by him transferred and delivered to J. H. Hyde, 65 Liberty street, New York city, without any stock.

Bonds 214 to 218, being five bonds originally issued to Samuel Untermeyer, were by him transferred and delivered to Henry 424 Gottgetrend, 291 Broadway, New York, together with ten shares preferred and twenty shares of common stock.

Bond 219, originally issued to Samuel Untermeyer, was by him transferred and delivered to Edward Nordlinger, 8 Harrison street, New York city, together with four shares preferred and eight shares of common stock.

Bonds numbered 220 to 250, being thirty-one bonds originally issued to Samuel Untermeyer, were by him transferred and delivered to Isaac Untermeyer, a member of the firm of Guggenheimer & Untermeyer, 46 Wall street, New York city, together with 102 shares of preferred and 860 shares of common stock.

Bonds numbered 264 to 275, being twelve bonds originally issued to Samuel Untermeyer, 46 Wall street, New York, were by him assigned and transferred to Isaac Untermeyer, of the same firm, 46 Wall street, New York city.

Bonds numbered 276 to 280, being five bonds originally issued to

Samuel Untermeyer, were by him assigned, transferred and delivered to Randolph Guggenheimer, of the same law firm, together with 222 shares of preferred stock and 1,100 shares of common stock.

Bonds 281 and 282, originally issued to Samuel Untermeyer, he still holds as shown by the bond register, and he is also the holder of 483 shares of preferred and 1,711 shares of common stock as shown by the stock register.

Bond 283, originally issued to Samuel Untermeyer, he transferred and delivered to E. H. Nordlinger, of 8 Harrison street, New York, and the amounts of preferred and common stock as shown above in reference to bond No. 219.

Bonds 284 to 293, being ten bonds originally issued to Samuel Untermeyer, he transferred and delivered to Moses Weiman, a member of the firm of Guggenheimer & Untermeyer, 46 Wall street, New York city, together with 38 shares of preferred stock and 379 shares of common stock.

Bonds numbered 294 to 298, originally issued to Samuel Untermeyer, he still holds.

Bonds numbered 299 to 318, twenty bonds originally transferred and delivered to Samuel Untermeyer, were by him transferred and delivered to Solomon Marx, 25 East Seventy-third street, New York city, together with forty shares of preferred and eighty shares of common stock, and in regard to this man I have the additional information that Mr. Marx himself swears to the fact as shown by a certified transcript of the proceedings by Marx in New Jersey.

MR. DUPEE: I object to any statement as to any document unless it is produced.

425 Bonds 319 and 320, originally issued to Samuel Untermeyer, were by him transferred and delivered to Herman Kohnstan, of 126 Chambers street, New York, together with four shares of preferred and eight shares of common stock.

Bonds 321 and 322, originally issued to Samuel Untermeyer, were by him transferred and delivered to Emanuel H. Kohnstan, 126 Chambers street, New York city, together with four shares of preferred and eight shares of common stock.

Bonds 323 and 324, originally issued to Samuel Untermeyer, were by him transferred and delivered to Isaac Hermann, of 13 White street New York city, together with four shares of preferred and eight shares of common stock.

Bonds 325 to 329, being five bonds, originally issued to Samuel Untermeyer, were by him transferred and delivered to the executor of Morris Davidson, deceased, forty-six East 65th street, New York city, with ten shares of preferred and twenty shares of common stock.

Bonds 330 and 331, being two bonds, originally issued to Samuel Untermeyer, were by him transferred and delivered to Aaron Naumburg, 120 Bleecker street, New York, together with four shares of preferred and eight shares of common stock.

Bonds 332 to 341, being ten bonds originally issued to Samuel

Untermeyer, were by him transferred and delivered to Adolph G. Hupper, 161 St. Anne's avenue, New York city, together with twenty shares of preferred and forty shares of common stock.

Bonds 342 to 346, originally issued to Samuel Untermeyer, were by him transferred and delivered to Sedford and Leo Hermann, 35 East 65th street, New York city, together with ten shares of preferred stock and twenty of common.

Bonds 347 to 356, being ten bonds, originally issued to Samuel Untermeyer, were by him transferred and delivered to Nathan and J. Erlanger, 95 Prince street, New York city, together with twenty shares of preferred and forty shares of common stock.

Bonds 357 to 361, originally issued to Samuel Untermeyer, being five bonds, were by him transferred and delivered to Hermann Rosenberg, 144 Bleecker street, New York, together with ten shares of preferred and twenty shares of common stock.

Bonds 362 to 385, being 24 bonds, originally issued to Samuel Untermeyer, he still owns.

Bond 386, being one bond issued to Samuel Untermeyer, he still owns.

Bonds 387 to 389, being three bonds originally issued to Samuel Untermeyer, were by him transferred and delivered to Bernhard Lowenstein, 57 Leonard street, New York city.

426 Bonds 390 to 394, originally issued to Samuel Untermeyer, being five bonds, were by him transferred and delivered to Bernhard Lowenstein, together with said eight bonds, and there were transferred sixteen shares of preferred and thirty-two shares of common stock.

Bond 395, originally issued to Samuel Untermeyer was by him transferred and delivered to Robert P. Spencer, 87 Pine street, New York, together with two shares of preferred and four shares of common stock.

Bonds 409 to 428, being twenty bonds originally issued to Samuel Untermeyer, were by him transferred and delivered to James Flanagan of 262 Tenth avenue, New York, together with twenty shares of preferred and forty shares of common stock.

Bonds 429 to 438, being ten bonds, originally issued to Samuel Untermeyer, he still owns.

Bonds 439 to 520, being eighty-two bonds, originally issued to Samuel Untermeyer, were by him transferred and delivered to Randolph Guggenheimer.

Bonds 521 to 525, being five bonds originally issued to Samuel Untermeyer, were by him transferred and delivered to Max Rosenbaum, of Pittsburg, Pennsylvania, together with ten shares of preferred and twenty shares of common stock.

Bonds 526 to 530, being five bonds originally issued to Samuel Untermeyer, were by him transferred and delivered to Max Rothchild, Pittsburg, Pennsylvania, together with ten shares of preferred and twenty shares of common stock.

Bonds 531 to 535, being five bonds originally issued to Samuel Untermeyer, were by him transferred and delivered to Isaac Unter-

meyer of the firm of Guggenheimer and Untermeyer, 46 Wall street, New York.

Bonds 536 and 537, being two bonds originally issued to Samuel Untermeyer, were by him transferred and delivered to Benjamin Seaward, 283 West 23d street, New York, together with four shares of preferred and eight shares of common stock.

Bonds 538 to 562, being twenty-five bonds originally issued to Samuel Untermeyer, were by him transferred and delivered to Otto Huber, 242 Mesovole street, Brooklyn, New York, together with fifty shares of preferred and one hundred shares of common stock.

Bonds 563 to 567, being five bonds originally issued to Samuel Untermeyer, were by him transferred and delivered to A. B. Ansbocker, 4 Murray street, New York, and the stock book shows no stock.

Bonds 568 to 571, being four bonds originally issued to Samuel Untermeyer, were by him transferred and delivered to Isaac Untermeyer, 46 Wall street, New York.

427 Bonds 573 to 583, being twelve bonds originally issued to Samuel Untermeyer, were by him transferred and delivered to Randolph Guggenheimer, 46 Wall street, New York.

Bonds 584 and 585, being two bonds originally issued to Samuel Untermeyer, were by him transferred and delivered to Henry and Sadie Allman, Buffalo, New York, together with six shares of preferred and thirty-nine shares of common stock.

Bonds Nos. 586 to 590, being five bonds originally issued to Samuel Untermeyer, were by him transferred and delivered to S. A. Wheeler, of Buffalo, New York, together with ten shares of preferred and thirty shares of common stock.

Bonds 591 to 641, being five bonds originally issued to Samuel Untermeyer, are still held by him.

Bonds 642 to 646, being five bonds originally issued to Samuel Untermeyer, were by him transferred and delivered to William C. Heppenheimer, Hoboken, New Jersey, together with ten shares of preferred and twenty shares of common stock, and he also owns one share of common stock which he received in order to entitle him to be a director in the company.

Bonds 647 to 651, being five bonds originally issued to Samuel Untermeyer, of New York, were by him transferred and delivered to William Levromis, No. 3 Broad street, New York city, together with ten shares of preferred and twenty shares of common stock.

Bonds 652 to 656, being five bonds originally issued to Samuel Untermeyer, were by him transferred and delivered to Emanuel Goldschmidt, 95 Prince street, New York city, together with ten shares of preferred and twenty shares of common stock.

One bond, 657, originally issued to Samuel Untermeyer, was by him transferred and delivered to Moses Weinmann, of the firm of Guggenheimer & Untermeyer, 46 Wall street, New York.

And that takes up all the bonds that Mr. Samuel Untermeyer got.

Mr. DUPEE: So far as the testimony of the witness in answer to

the last question goes, all that part of it which undertakes to state contents of stock books, bond books, or other instruments in writing, is objected to, and if on cross-examination it shall appear that the information was derived from that source, I shall move to strike it out.

Q. Do you know who Philo D. Beard associated with him as his friends and for whom he acted as their representative and agent?

A. Yes, sir.

Q. Well, you can give the names of the parties and the amount of bonds that he transferred to them if you can do so.

428 Mr. DUPEE: So far as this question calls for information as to the contents of documents, or so far as it is derived from written documents, I shall object to it.

Q. Do you know how many bonds in general Mr. Beard agreed to take?

A. Only from my conversation with Mr. Wolf, in which he said about two hundred and fifty bonds.

Bonds 81 to 90, being ten bonds originally issued to Mr. Philo D. Beard of Buffalo, New York, were by him transferred and delivered to Mr. F. L. Danforth, whom I know to be a banker of Buffalo, together with twenty shares of preferred and one hundred and thirty shares of common stock.

I would say that Mr. Danforth is the cashier of the Buffalo Commercial Bank of Buffalo.

Bonds 91 to 95, being five bonds, originally issued to Mr. Philo D. Beard of Buffalo, were by him transferred and delivered to Mr. G. B. Rich, the president of the Buffalo Commercial bank, together with ten shares of preferred and sixty-five shares of common stock.

Bonds 96 to 100, being five bonds originally issued to Mr. Philo D. Beard of Buffalo, were by him transferred and delivered to Mr. George Gorham of Buffalo, New York, together with ten shares of preferred and twenty shares of common stock.

Bonds numbered 101 to 110, being ten bonds originally issued to Mr. Philo D. Beard of Buffalo, were by him transferred and delivered to Mr. A. C. Collyer of Buffalo, New York, without any stock.

Bonds 111 to 115, being five bonds originally issued to Mr. Philo D. Beard of Buffalo, New York, were by him transferred and delivered to Mr. S. C. De Goursey, of Philadelphia, Pennsylvania, together with ten shares of preferred and fifty shares of common stock.

Bonds 116 to 120, being five bonds originally issued to Mr. Philo D. Beard, were by him transferred and delivered to Mr. A. W. Morgan of Buffalo, New York, together with ten shares of preferred and fifteen shares of common stock.

Bonds 121 to 125, being five bonds originally issued to Mr. Beard, were by him transferred and delivered to George D. Morgan, of Buffalo, New York, together with ten shares of preferred and sixty-five shares of common stock.

Bonds 126 to 140, being fifteen bonds originally issued to Mr. Philo D. Beard, were by him transferred and delivered to Mr. D. R. Moss

and Henry M. Watson, of Buffalo, New York, together with ten shares of preferred and thirty shares of common — to Mr. 429 Mr. Moss, and twenty shares of preferred and one hundred shares of common — to Mr. Watson.

Bonds numbered 141 to 145, being five bonds, originally issued to Philo D. Beard, were not by him assigned, transferred and delivered; he still holds them.

Bonds 146 to 150, being five bonds originally issued to Mr. Philo D. Beard, were by him transferred and delivered to Mr. Charles D. Marshall, of Buffalo, New York, together with ten shares of preferred and twenty shares of common stock, Mr. Marshall being a member of the law firm of Marshall, Clinton and Rabbadow.

Bonds 668 and 669, being two bonds originally issued to Mr. Beard, were by him transferred and delivered to Mr. Morris Morey, of Buffalo, New York, together with ten shares of preferred and twenty shares of common stock.

Bonds 670 to 674, being five bonds originally issued to Philo D. Beard, were by him transferred and delivered to Henry W. Sprague, of Buffalo, New York, together with ten shares of preferred and twenty shares of common stock.

Bonds 675 to 689, being five bonds originally issued to Philo D. Beard, he still owns.

Bonds 680 to 682, being three bonds originally issued to Philo D. Beard, were by him transferred and delivered to Morris Morey, of Buffalo, New York. I inserted the amount of common and preferred stock he received above in answer to bonds 668 and 669.

Bonds 937 to 941, being five bonds originally issued to Philo D. Beard, of Buffalo, New York, were by him transferred and delivered to Mr. E. J. Hall, of New York city, together with ten shares of preferred and fifty shares of common stock.

Bonds 942 to 951, being ten bonds originally issued to Mr. Philo D. Beard, were by him transferred and delivered to Mrs. E. C. Eliste and Mrs. Anderson Murdock, of Springfield, Erie county, New York.

Bonds 952 to 956, being five bonds originally issued to Mr. Philo D. Beard, were by him transferred and delivered to Messrs. Thomas & Walker, Buffalo, New York, together with ten shares of preferred and fifty shares of common stock.

Bonds 957 to 961, and bonds 986 to 990, being ten bonds in all, originally issued to Mr. Philo D. Beard, were by him transferred and delivered to Mr. Wilson S. Bissell, of the law firm of Bissell, Secard, Bissell & Cary, Buffalo, New York, together with twenty shares of preferred, and one hundred and thirty shares of common stock.

Bonds 962 to 966, being five bonds originally issued to Philo D. Beard, were by him transferred and delivered to Mr. Charles 430 D. Marshall. I gave the amount of stock that Mr. Marshall received in giving bonds numbered 146 to 150.

Bond No. 967, one bond originally issued to Philo D. Beard, Buffalo, New York, was transferred by him to Sadie R. Allman.

Bonds 968 to 970, being three bonds originally issued by Mr.

Beard, were by him transferred and delivered to Mr. J. Genshofer, without any stock, Buffalo, New York.

Bonds 971 to 975, being five bonds, bonds 976 and 977 to 985, being fifteen bonds, are still held by Mr. Beard.

Bonds 991 to 995, being five bonds originally issued to Mr. Beard, were by him transferred and delivered to Mr. S. E. Catlin, of Buffalo, New York. That is all of Mr. Beard's bonds, except Mr. Beard owns some other bonds here originally issued to Mr. Hood.

Q. What do you know about any bonds being issued to Mr. Hood, which Mr. Beard owned?

A. Bonds 1 to 25 inclusive, being twenty-five bonds, were originally issued to Mr. John D. Hood, of Chicago, Illinois, and were by him transferred and delivered to Mr. Philo D. Beard, of Buffalo, New York, who holds 347 shares of preferred and 2,960 shares of common stock.

Q. There were 167 bonds in all issued to Mr. Hood; do you know who, as a matter of fact, these bonds went to, and for whose use and benefit they were issued to Mr. Hood?

A. I can show where the bonds now are, and although they stand on the bond book of the company as in the name of banks, the Ridgely national bank, that Mr. Stein testified to this morning, as bonds owned by these directors. For instance, the bonds numbered 26 to 35, ten bonds originally issued to J. D. Hood, were by him transferred and delivered to the Ridgely national bank, of Springfield, Illinois, all stand on the bond book in its name, but Mr. Stein testified this morning that they belonged to the directors.

Mr. DUPEE: Objected to as being a statement of the contents of a written instrument.

A. (Continuing:) Bonds 36 to 80, being forty-five bonds, originally issued to Mr. John D. Hood, of Chicago, were by him transferred and delivered and are now standing on the books of the company as belonging to the Savings Trust Company of Cleveland, Ohio. I personally know in regard to these bonds that they are in pledge to secure thirty thousand dollars now due from the company to J. W. Cassingham, of Coshocton, Ohio, and Mr. McElroy, of Pittsburgh, Pennsylvania, and J. S. Smart, of Newark, Ohio, the owners of the Coshocton and Newark mills, they holding the 431 notes of the company, under an agreement which was in writing, in which Mr. Wolf was trustee.

Q. Do you know who placed these bonds as collateral for these notes in the company?

A. These bonds were placed in the Cleveland bank, together with a lot of preferred stock.

Q. By whom?

A. By Mr. Wolf as the trustee; when that note is paid he is to receive back the bonds and stock; he has already received the preferred stock back.

Q. Who is he trustee for?

Mr. DUPEE: Do not state the contents of any writing, please.

The WITNESS: No, I am not going to.

A. He is the trustee for these mentioned by Mr. Stein who had advanced the bonds to the company, and these parties being composed of Mr. Samuel Untermeyer, Philo D. Beard, Mr. Trebein, Mr. Higgins, Mr. Church and—I believe that is all.

Bonds 658 to 665, being eight bonds originally issued to John D. Hood, of Chicago, were by him transferred and delivered to Mr. Moses Weiman, of the firm of Guggenheimer & Untermeyer, 46 Wall street, New York; and bonds 781 to 790, being ten bonds originally issued to Mr. John D. Hood, Chicago, Illinois, were by him transferred and delivered to the Ridgley National Bank of Springfield, Illinois, and the same facts apply as to these bonds as did in reference to bonds 26 to 35 above spoken of.

Bonds 811 to 815, five bonds, originally issued to Mr. John D. Hood, of Chicago, Illinois, were by him transferred and delivered to the Ridgley National Bank of Springfield, Illinois, and the same facts exist as to these bonds as do as to the others.

Bonds 831 to 850, being twenty bonds originally issued to Mr. John D. Hood, of Chicago, Illinois, were by him transferred and delivered to the estate of Theron W. Sterling, St. Louis, Missouri, together with forty shares of preferred and eighty shares of common stock. I had a conversation with the attorney of that estate the other day—

Mr. DUPEE: I shall object to that.

A. (Continuing:) Bonds 856 to 860, being five bonds originally issued to John D. Hood, of Chicago, Illinois, now stand in his name upon the books of the company, together with one share of the preferred stock.

Mr. DUPEE: I object to so much of the answer as states contents of the book.

A. (Continuing:) Bonds 866 to 869, four bonds originally issued to John D. Hood, were by him transferred and delivered to
432 E. P. Hooker, of Defiance, Ohio, together with eight shares of the preferred and sixteen shares of the common stock.

Bonds 875 to 887, being thirteen bonds originally issued to John D. Hood, were by him transferred and delivered to John Silk, Massillon, Ohio; Mr. Silk was the proprietor of the Massillon mill, and he holds 134 shares of preferred and 266 shares of common stock, all of which he received in payment for his mill, with the exception of twenty-six shares of preferred and fifty-two shares of common, which he received with his bonds.

Bonds 900 to 904, being five bonds originally issued to John D. Hood, of Chicago, Illinois, were by him transferred and delivered to the firm of Dupee, Judah, Willard & Wolf.

Bond 914, being one bond originally issued to John D. Hood, was by him transferred and delivered to Mr. F. R. Baker, 167 Dearborn street, Chicago.

Bonds 915 to 919, being five bonds, originally issued to John D. Hood, were by him transferred and delivered to Mr. F. S. Giddings

and Frank Wells, 94 La Salle street, Chicago, together with ten shares of preferred and twenty-five shares of common stock.

Bonds 920 to 924, being five bonds originally issued to John D. Hood, Chicago, were by him transferred and delivered to J. and W. Dupee, Chicago.

Bonds 925 to 929, being five bonds, originally issued to John D. Hood, Chicago, were transferred and delivered by him to Mr. George A. Secard, of Buffalo, New York, together with 230 shares of preferred and 65 shares of common, Mr. Secard being a member of the law firm of Secard, Bissell, Secard & Cary.

Bonds 930 to 934, being five bonds originally issued to John D. Hood, Chicago, were by him transferred and delivered to Mr. G. E. Jones, of Chicago, together with ten shares of preferred and twenty shares of common stock.

Bonds 935 and 936, being two bonds originally issued to John D. Hood, were by him transferred and delivered to the Continental National Bank of Chicago.

Q. Mr. Sherwood, do you know how many bonds Messrs. Dupee, Judah & Willard, for themselves and their associates, agreed to take and did take?

A. I stated that in that conversation with Mr. Wolf, he told me that Dupee, Judah, Willard & Wolf would take sixty thousand of these bonds.

MR. DUPEE: Do you know whether they ever took any?

THE WITNESS: I am not answering your questions now.

MR. DUPEE: Do you decline to answer?

THE WITNESS: Yes; but I know that they did.

MR. GRESHAM:

433 Q. Now, Mr. Sherwood, I will ask you if you know who the first board of directors of the Columbia Straw Paper Company was, as disclosed by Mr. Stein's answer to the cross-bill. I will name them and then you tell who they are. Philo D. Beard?

A. Mr. Philo D. Beard is the Philo D. Beard that has been mentioned, he is one of the original incorporators of the company and one of the promoters.

Q. William C. Heppenheimer?

A. He is one of the original incorporators of the company, a resident of Hoboken, New Jersey, has an office in New York city, he is a lawyer and was the original treasurer of this company.

Q. William C. Taylor?

A. William C. Taylor is a man who lives at Utrecht, New York, a man in the office of Guggenheimer & Untermeyer, a young lawyer there, and one of the original incorporators of this company.

Q. Maurice Untermeyer?

A. Maurice Untermeyer is a member of the firm of Guggenheimer and Untermeyer.

Q. Moses Weinmann?

A. He is also in the firm there.

Q. T. L. Hermann?

A. T. L. Hermann is a young lawyer in New York city, who is engaged in the firm of Guggenheimer & Untermeyer.

Q. Harry C. Manheim?

A. The same as to him.

Q. Samuel H. Guggenheimer?

A. Samuel H. Guggenheimer is the original secretary of the company.

Q. And a member of the firm?

A. No; he is not a member of the firm, he is connected with the firm.

Q. Now, who is Randolph Guggenheimer?

A. He is the head of the firm of Guggenheimer & Untermeyer.

A. And Samuel Untermeyer is, too?

A. He is the leading man of the firm.

Q. Who is Isaac Untermeyer?

A. He is a member of the firm of Guggenheimer & Untermeyer.

Q. Do you know who Otto Huber is?

A. No.

Q. Solomon Marx?

A. No.

434 Q. Then your allegation, or the allegation in your answer that the first board of directors included Mr. Stein and some others was made on the information that you received from Mr. Stein, was it not?

A. No; Mr. Trebein, at the meeting on the 10th day of December, between the 10th and 12th, two days prior to the time Stein was said to have made this proposition. At that time in Mr. Wolf's office, these gentlemen all met with the understanding that they were to be the board of directors. I had received this letter from Mr. Trebein prior thereto.

Q. This first board of directors then was a straw board?

Mr. DUPEE: Objected to as leading.

A. The first board of directors was a board which was elected immediately upon the organization of the company by the three incorporators, Mr. Beard, Mr. Taylor, and Mr. Heppenheimer, and they lasted as a board until these other gentlemen were elected, which was for a period of about two weeks; and they resigned one after another and these men were put on afterwards; but Mr. Frieze and Mr. Higgins and Mr. Augustus T. Brown, they knew nothing of that other board; you see at that meeting on the 10th when Mr. Robertson and Mr.—

Mr. DUPEE: I believe there is no question.

Mr. GRESHAM: Go on and state anything you may know bearing on this subject.

A. I would rather you ask the question.

Q. You said that Mr. Trebein and Mr. Halliday and did you state Mr. Brown?

A. No; I stated Mr. Frieze and Mr. Trebein—no, Mr. Frieze, Mr. Higgins, and Mr. Brown, they were the mill-owners, and they

knew nothing of this at this time, because in my talks with them there on that day, a discussion arose on the making of two more directors, so as to bring in Mr. Robertson and Mr. Richardson. Mr. Robertson refused to turn his mill over unless he was made a director. That was the cause of its being done. They agreed to it at the time and afterwards threw him over.

Q. Who agreed to that and afterwards threw him over?

(Objected to by counsel for complainants as irrelevant.)

A. Mr. Trebein, Mr. Church, Mr. Stein, and Mr. Beard and those gentlemen who were there.

Q. Did those gentlemen learn from you exactly what it would take to acquire these seventy mills according to the options which you had secured in 1890?

(Objected to by counsel for complainants as irrelevant.)

A. Yes.

435 Q. Was there any difference in the amount of the options which you secured on the mills in Michigan, from that of the options which you secured in 1890?

(Objected to by counsel for complainants as irrelevant.)

A. None that I remember.

Q. Now please explain definitely just how much it would have taken in stocks and bonds to acquire the seventy mills which it was understood the corporation would acquire?

(Objected to by counsel for complainants as irrelevant.)

A. According to the statement which I gave Mr. Stein and which he took down east to show Messrs. Beard, Untermeyer, and the others, there were fifty-four mills to be taken in outright under the cash and stock system, and it would cost to take these in two million three hundred and ninety-one thousand dollars (\$2,391,000), then there were eleven mills of small capacity that were to be leased down, there were two mills with which agreements were to be made for the sustaining of prices, and then there were three mills that were in process of building, and we could not make any arrangement about them, they being situated in Nebraska and Illinois; but it was generally understood among the mills and talked that they——

Mr. DUPEE: All hearsay evidence is incompetent.

The WITNESS: I will not put it in just that manner.

Mr. GRESHAM: What were you going to say was generally understood amongst the mills?

(Counsel for complainants objects to hearsay evidence and to witness stating what was understood.)

A. I say it was generally understood and shown to the mill men by Mr. Stein, and to these men as they came in——

Mr. DUPEE: In your presence?

A. (Continuing): In my presence, and on one occasion at what

we called the critical time, when we got the large mill men and had them in Mr. Judah's room——

Mr. DUPEE: Was he there?

A. (Continuing): No, he wasn't there; Mr. Wolf was there, and Mr. Stein was there, and I was there; got in Frees and men of that kind, of the bigger mills, to talk to, the idea was to go to work and put the mills over to the company before the money was paid and there was great objection to it at that time, and it was about the time when they had got in about twenty mills, and it was then understood among all the mill men that all the mills were to be in and the cost would be between three and four millions of dollars.

(Counsel for complainants objects to the last answer as irrelevant.)

436 Q. Either in stocks or money?

A. In stocks, money and all.

Q. What was the purpose and object of the organization of this company?

(Objected to by counsel for complainants.)

A. The purpose was to get all the mills under one management.

Q. What particular class, what was the product of these mills?

A. They make straw wrapping paper.

Q. How many mills were there engaged in this territory east of Nebraska and north of the Ohio river?

A. Well, the mill territory ran from Pittsburgh on the east to Lincoln, Nebraska, on the west, and as far north as Minneapolis and south to the Ohio river.

Q. What proportion of the plants in this territory was it proposed to take into the corporation or combination?

A. Every one of them.

Q. Now, what is the product of these mills?

A. They make wrapping paper out of straw; it is used by butchers and by bakers and grocers.

Q. What sort of straw is it made of?

A. Wheat, rye and oats, but of wheat and rye mostly.

Q. What other points in the United States other than those in this territory named are there where there are these wrapping-paper plants?

A. Well, there practically are none except those that are west of the Rocky mountains; there are one or two mills in California, but they could not come east of the Rocky mountains and we could not go west of the Rocky mountains and east of Pittsburgh. Down in New York and Pennsylvania they have some small mills, but the price of straw is so high they can only make what they call a cigarette paper and they do not compete with these mills; this combination was to take in everything, but they jumped it too soon.

Q. And wrapping paper is an article of trade and commerce, is it not?

A. It is. I am frank to say now that it is my impression that Mr. Untermyer was not fully informed; I do not know that.

Q. Do you know who Louis Marshall is? Louis Marshall, of New York, do you know him?

A. Yes, he is now a member of the law firm of Guggenheimer, Untermeyer and Marshall.

Q. Do you know how long he has been a member of that firm?

A. Yes; about a year and a half.

437 Q. Was he a member of that firm at the time of the organization of the Columbia Straw Paper Company?

A. No; he was not.

Mr. GRESHAM: Now, at this point we offer in evidence a certified copy of the proceedings before Chancellor McGill, of the State of New Jersey, in which a receiver was appointed for the Columbia Straw Paper Company in the courts of New Jersey on May 6th last, Mr. Marshall appearing in these proceedings as attorney and filing an affidavit which states that he drew a bill under which the proceedings to foreclose in this court were taken.

The same is marked "Defendants' Exhibit A, H. W. B., 11, 30, '95," and is in words and figures as follows, to wit:

Q. Mr. Sherwood, explain what was this Paper Commission Company, and how it was operated.

A. Well, after they got started in the business and got to running, these outside mills they hadn't taken in commenced to trouble them cutting prices: the board of directors of the Columbia Straw Paper Company at first jumped paper up to thirty dollars a ton from about twenty-four dollars, and then these outside mills got running day and night, selling at less prices, and they found they had to do something to keep the market up, so in order to stop competition, and fix it so all the mills could live, they got the outside mills, consisting of the Hartford City mill and Eaton mills in Indiana, and mills at Niles, Michigan; Allegan, Michigan, and the Wabash, Indiana mill, and one or two others that I don't recollect at present, to come in, and they formed a Paper Commission Company under the laws of New Jersey, the incorporation papers being drawn, as I understand it, by Mr. Samuel Untermeyer, I think he has so stated in his answer to the cross-bill, and this Paper Commission Company was purely a commission company—that is, all the mills sold their paper through the commission company. The commission company charged a per cent. of so much a ton, and in that way they were able to hold the market together for a while. It is a kindred organization with the Standard Wheel Company and the Standard Straw Board Company, on the same basis.

Q. A means of preventing competition and sustaining prices, in other words of successfully operating a trust?

A. Well, of course it is not a trust.

Q. It is a means of enabling the trust to successfully operate?

A. It is a means of doing that which is done by means of trusts, but that is declared illegal.

Q. Now this Paper Commission Company, I say it was the means of enabling the Columbia Straw Paper Company to maintain and continue—

Q. It is a trust, is it not?

438 (Counsel for complainants objects to the question as leading.)

A. The object of the formation of the Paper Commission Company was to save the Columbia Straw Paper Company from being competed with by these other mills, it was for the mutual benefit of the Columbia Straw Paper Company and the other mills.

Q. Then it was for the purpose of keeping up the trust?

(Objected to by counsel for complainants because the witness has refused a half a dozen times to accept the answer which the counsel endeavors to have him accept.)

The WITNESS: The witness only objects to this, because of the word "trust."

Mr. DUPEE: I notice you did object.

The WITNESS: If he had said "combination" I would have said yes.

Mr. GRESHAM: Well, let it go at that. That is all, Mr. Sherwood.

Testimony of C. A. Dupee.

CHARLES A. DUPEE, called as a witness on behalf of certain defendants, being first duly sworn, was examined by Mr. Gresham and testified as follows:

Q. When did the firm of Dupee, Judah & Willard become attorneys for the Columbia Straw Paper Company, Mr. Dupee, about?

A. Personally, I do not think I can state the time with accuracy; my impression is, it was soon after its organization.

Q. In December, 1892?

A. Along about that time.

Q. Was Henry M. Wolf a member of the firm of Dupee, Judah & Willard at that time?

A. Yes, sir.

Q. How long had he been a member of the firm at that time?

A. About a year or more.

Q. How long did the firm of Dupee, Judah & Willard continue to be attorneys for the Columbia Straw Paper Company?

A. I cannot fix that with accuracy without referring to the books.

Q. Well, generally?

A. Why, somewhere in the neighborhood of two or three months before the bill to foreclose was filed.

439 Q. That would be along about December, 1894?

A. Some time in that neighborhood, I would not attempt to state it with accuracy without consulting the books.

Q. I want to fix it for the purpose of getting at—

A. It may have been somewhere along in that neighborhood.

Q. Were Guggenheimer & Untermeyer, attorneys for the Columbia Straw Paper Company during this period also?

A. I suppose so; I saw the names of Guggenheimer & Untermyer and Dupee, Judah & Willard, I think, on the deed of trust, the original deed of trust, which was printed in a dozen parts, perhaps.

Q. When did Herrick, Allen & Boyeson become solicitors for the Columbia Straw Paper Company?

A. About the same time my firm ceased to be, whenever it was.

Q. Was it in view of the proceedings to foreclose, that your firm ceased to be the attorneys for the Columbia Straw Paper Company?

A. The Northern Trust Company, one of the trustees, had been for several years a client of ours, and in view of the possible complications which the condition of the company seemed likely to bring about, we preferred not to act for the company any longer, and resigned.

Signature waived by agreement of counsel.

Testimony of C. L. Allen.

CHARLES L. ALLEN, called as a witness on behalf of certain defendants, being first duly sworn, was examined by Mr. Gresham and testified as follows:

Q. How long have you known Philo D. Beard?

A. I should say about five years, four or five.

Q. Have the firm of Herrick, Allen & Boyeson been solicitors for Mr. Beard?

A. No, never until recently.

Q. Well, prior to your appearance for the Columbia Straw Paper Company, have they acted as counsel for him?

A. No, we have not.

Q. You appear for him in this case?

A. We filed an answer for him to the cross-bill.

Signature waived by agreement of counsel.

440 Adjourned to Thursday, 10.00 a. m., January 2, 1896.

Thursday, January 2, 1896.—A further continuance was taken until the following day, Friday, January 3, 1896, at 10.00 a. m.

THE NORTHERN TRUST COMPANY ET AL.	} In Chancery. No. 23614.
vs.	
COLUMBIA STRAW PAPER CO. ET AL.	

Testimony taken before Henry W. Bishop, master in chancery, Friday, January 3rd, A. D. 1896, at ten o'clock in the forenoon, pursuant to adjournment.

Present: Mr. Dupee, Mr. Allen, Mr. Gresham.

Counsel for certain defendants offers in evidence the letter of F. C. Trebein to John B. Sherwood, dated October 17th, 1892, heretofore referred to on page 195 of record.

Counsel for complainants objects to the introduction of the letter on the ground that it is irrelevant as to the complainants and as to all parties named in the letter except Mr. Trebein himself.

Said letter admitted subject to objection and is marked "Defendants' Exhibit B" and is in words and figures as follows, to wit:

DEFENDANTS' EXHIBIT B—LETTER.

"Office of F. C. Trebein & Co., millers and grain dealers, proprietors
Excelsi-r mills, Shawnee mills, Jamestown mills.

TREBEIN, GREEN CO., O., Oct'r 17, 1892.

Jno. B. Sherwood, Esq., Lafayette, Ind.

DEAR SIR: I was under the impression that I advised you of my going down to New York city. Well, I was down there with the parties, failed however of meeting their attorneys who I never have had the pleasure of meeting. Know for sure however that Mr. Beard will not turn a leaf, unless by the advice of his attorneys which is all right. It only shows that no one else need have any say. Next week we all meet in Chicago to give matters a final finish. Mr. Beard is president, myself vice-president, S. Stein, treasurer, Halladay sales agent, Church superintendent; 441 Mills, Frees, Higgins, directors. Gus Brown is Church's favorite for the other director. Halladay seems to support Church. Who the last-named director will be is not yet definitely settled. I would say to Mr. Robertson if he asks, that the capitalists name the men, as organizers, who will serve for the time set by the board of directors in their by-laws, for the annual meeting by the stockholders of the board of directory. Would say as little about the matter as possible until after next week.

Yours truly,

F. C. TREBEIN."

Testimony of J. B. Sherwood.

JOHN B. SHERWOOD.

Direct examination continued by Mr. GRESHAM:

Q. Did you ever see a copy of the proposed scheme by which Messrs. Beard, Untermeyer, Guggenheimer and others, who were originally organizers and promoters of this company, proposed to organize after a decree of sale in this cause?

(Objected to by counsel for complainants on the grounds first, that it assumes that all the parties named were originally promoters, contrary to the fact; second, that, if I understand the question correctly, it calls for occurrences since the commencement of these proceedings; and third, on the ground that it is irrelevant as to the complainants in the case.)

A. Yes, sir; I saw a plan of the proposed reorganization of the Columbia Straw Paper Company.

Q. What knowledge, if any, have you of Messrs. Beard, Trebein,

or any other of the directors of the Columbia Straw Paper Company, being endorsers on the paper of the Columbia Straw Paper Company?

(Objected to by counsel for complainants as irrelevant.)

A. All the members of the Columbia Straw Paper Company, with the exception of Mr. Halladay and Frees, are endorsers on about eighty-five thousand dollars' worth of Columbia Straw Paper Company's unpaid paper.

Q. Do you know whether these gentlemen proposed the scheme of reorganization that they had, that the reorganization of the company should take care of their endorsements on the paper to the amount of eighty-five thousand dollars?

(Objected to by counsel for complainants as irrelevant.)

A. Yes, sir; this was to be taken care of by means of certain bondholders; that is, these directors who held bonds delivering up so many of their bonds to the company to be sold and were going to pay them this and that indebtedness with it.

Mr. DUPEE: Was this what you call a "scheme" in writing?

The WITNESS: Yes, sir; I saw a copy of the scheme; there were a number of parts; I saw one of them.

(Counsel for complainants objects to any testimony as to the contents of papers and documents.)

Mr. GRESHAM: How were the directors, who were to deliver up bonds which they had to be sold for the purpose of taking care of this endorsed paper, to be reimbursed, if at all?

(Objected to by counsel for complainants, who objects to any testimony as to contents of papers and documents.)

Q. (Continuing:) In the scheme of the new reorganization of the company?

A. That would necessitate explaining the whole scheme.

Q. Well, explain the whole scheme.

(Counsel for complainants objects to any statement as to the contents of papers and documents which the witness has referred to, and asks the master whether that question should be answered or not.)

The MASTER: I think where the testimony refers to a matter contained in a written instrument, it is obviously objectionable to state what that matter is. The objection is sustained.

Q. Do you know whether these parties who were endorsers for the Columbia Straw Paper Company were also holders of stock of the Columbia Straw Paper Company, for which they had not paid anything?

A. Yes, sir.

Q. I will ask you if you have in your possession a copy of this proposed scheme of reorganization of the Columbia Straw Paper Company?

A. No, sir; I never had a copy of it, I saw it.

Mr. GRESHAM: I want to make a motion now, as follows:

(Reading same:)

"To the complainants, The Northern Trust Company and Ovid B. Jameson, trustees, and their solicitors, Messrs. Dupee, Judah, Willard & Wolf, and the defendant The Columbia Straw Paper Company and its solicitors, Messrs. Herrick, Allen & Boyesen:

You are hereby requested to produce, on Friday, January 3rd, A. D. 1896, before Henry W. Bishop, Esquire, master in chancery, at his office, for the use of the defendants, Harry W. Dickerman *et al.*, the bond register of the defendant, Columbia Straw Paper Company, or the copy thereof which was kept and used in the city of Chicago until the same was sent to Samuel Untermeyer, secretary and attorney of the defendant company in New York as disclosed by the testimony of Emanuel Stein.

BLUFORD WILSON,

OTTO GRESHAM,

Solicitor- for said Defendants and Cross-complainants,

Harry W. Dickerman et al."

And as bearing upon that, and in that connection, I want to read section VII of the trust deed, which is as follows:

(Reading from page 12:)

"7. A register of the bonds will be kept at the company's office in the city of Chicago, containing full particulars of every bond that has been issued by the company, and also showing, in the case of any bond that may for the time being be registered, the name, address and description of the registered holder thereof. And such register shall, at all reasonable times during business hours, be open to the inspection of the registered holder hereof, his executors or administrators, or any person authorized in writing by him or them."

And in article XV the defendant company covenants and agrees that it will keep such a stock register. Now that is a book which according to the answer of the defendant company, is not required to be kept in New Jersey, under the statutes of the State of New Jersey, and therefore is subject to the control of the defendant company.

Mr. DUPEE: The bond register called for in the motion by counsel, is not in the possession or under the control of the complainants or their solicitors.

Mr. ALLEN: In answer to the notice to produce copy of the proposition made by Mr. Stein to the company, I wrote to the secretary's office, New York city, and received from him not the proposition, but a contract which was made at a time subsequent to the passage of the resolutions, the original contract executed by Emanuel Stein and the Columbia Straw Paper Company, which is subject to your inspection if you desire. I also found in Chicago a copy of the proposition which was made by Mr. Stein to the Co-

lumbia Straw Paper Company which I offer in answer, if you desire, to your notice. The original I have not here, I am informed this is a true copy, personally I know nothing about it, the original I presume can be produced, I merely produce this to facilitate the proceedings.

I propose to Mr. Gresham to arrange with him to have a copy made of the stock and bond registers, also of the record book of the company, for the production of which he has called, either through some representative of Mr. Gresham in New York
444 or otherwise as you may agree, to obviate the necessity of taking depositions for the production of such books.

Counsel for the company in this proceeding, are not able to produce at this time the books and records above referred to as they are in either the possession of the receiver, in New Jersey, or at the office of the company in New Jersey, or in possession of the secretary in New York.

JOHN B. SHERWOOD.

Cross-examination by Mr. DUPEE:

Q. Mr. Sherwood, you are a lawyer?

A. Yes, sir.

Q. Are you one of counsel, or the solicitors for the defendant, Harry W. Dickerman—

A. No, sir.

Q. —trustee for the Second National Bank of Rockford, Illinois, Henry S. Carroll for himself and the Clarksville Paper Company, Fred J. Diehm, Freeman Graham, Jr., Julius Graham, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, defendants?

A. No, sir; I am not.

Q. Have you at any time been in these proceedings their attorney or counsel?

A. No, sir.

Q. You have been present during all the time testimony has been taken on behalf of said defendants have you not?

A. Yes, sir.

Q. And you have been present at most of the motions and arguments and other proceedings had in this matter, have you not?

A. Yes, sir; I think all of them—not all of them.

Q. Are you employed by anybody to—

A. No, sir.

Q. —so to do?

A. No, sir.

Q. Have you received from any one a compensation for assisting these several gentlemen who are also cross-complainants in this case?

A. No, sir.

445 Q. Then, so far as you have acted in the case, you have done so for merely personal reasons?

A. Yes, sir; as the owner of stock in the corporation.

Q. How much stock do you own in the corporation?

A. Twenty-five thousand dollars of common stock.

Q. When did you get that?

A. I received a certificate for that stock about the 1st day of June, 1893.

Q. You have held it ever since?

A. I have held it ever since; yes, sir.

Q. Was any part of that stock paid?

A. I received this stock from Mr. Stein, and he received it in the same manner that he received all other stock that he received.

Q. Please answer the question.

A. I understand your question to be: "Was this \$25,000 of stock paid for to the company?" Is that correct?

Q. (Question read.)

A. Paid to whom?

Q. Is the \$25,000 of stock paid for to the Columbia Straw Paper Company, or does it still have a right against you for the payment thereof?

A. That is a legal question. I did the work in the assisting of the organization of the Columbia Straw Paper Company, and also prior work, and gave Mr. Stein and the gentlemen associated with him the options that I had, and put them in possession of valuable information, and was to receive from Mr. Stein the sum of \$25,000 in full-paid stock of the company. It was the understanding between Mr. Stein and myself that this stock should be paid for to the company, and on that basis I took it from him, but from subsequent developments I do not believe that the stock is paid for at all.

Q. That is your information and has been your information?

A. That is my opinion now.

Q. How long have you had that opinion?

A. Since I discussed the matter and found out how this company was organized.

Q. Since what date?

A. Since the 7th day of February, the day after the filing of the bill in the circuit court of the United States for the State of Indiana.

Q. So that since that time it has been your opinion that your stock is fully unpaid, and that there is a liability from you to the company. Is that so?

A. I did not say so.

446 Q. I asked you if that is correct?

A. I took my stock in good faith, fully believing it was paid up, and I have gone on that supposition until I ascertained the manner in which the company was formed in February, 1895. Now, whether I owe the amount of that stock to the company or whether Mr. Stein owes it, is a legal question about which even experts might differ.

Q. Do you consider that you are under a liability to the company for the payment of your stock?

A. I never thought of it in that light.

Q. Looking at it now in such light as you have, what is your opinion on the subject?

A. I consider that Mr. Stein owes the twenty-five thousand dollars for that stock, and that I do not owe anything.

Q. You consider you have no indebtedness for the stock?

A. None whatever; that, however, is a legal question.

Q. You stated in your direct examination that prior to February 8, 1892, you had been employed by several parties to get options on straw-paper mills and plants; I understand that in February, 1892, those options were no longer in force. Is that correct?

A. The time of the options had run out in every case.

Q. So that they had no legal force, if I understand you correctly?

A. That is true; the importance of the options was the fact that it showed the value of the mills—what the value of the mills was if taken at that time.

Q. I am not asking you about that. You say also that the options which were taken in this transaction, about which you have testified, were taken all running to Thomas T. Ramsdell; are you not mistaken in that?

A. I notice the statement in my examination, and that is one of the corrections that I called your attention to before we sat down to this examination, and there are other misstatements in the examination which I wish to correct; they were not my misstatements, but were made by the stenographer. I think the options ran to Philo D. Beard and Thomas T. Ramsdell jointly.

Q. You say it was agreed and it was the understanding that options should be taken on all seventy of the mills?

A. They so said to me.

Q. Who said so?

A. Mr. Stein, Mr. Church, Mr. Trebein, Mr. Halladay, and it is my impression that in my conversation with Mr. Beard and Mr. Ramsdell, which I referred to in my direct examination I spoke of, the subject of the seventy mills was spoken of, in fact I feel
447 very sure of it. I have with me an exact copy of the statement, with the list of mills I gave Mr. Stein to take East, and I suppose he did so; I will produce it if you want to.

Q. Mr. Stein and these other gentlemen you say made these statements to you; when and where were they made, and who was present?

A. The first conversation that I had was with Messrs. Church and Stein in the Auditorium hotel.

Q. Were these statements at that time; and if so, what was said?

A. Allow me to answer the question, I am not half through, when you interrupted. The first conversation was held with Mr. Church and Mr. Stein at the Auditorium hotel, and at that time Mr. Stein asked me the direct question how many mills are there, and I had this paper and I showed him then and there that there were seventy mills, that under the plan of making a success, fifty-four of them must be bought outright, eleven of them leased down, they were poor mills not worth buying, but nevertheless would

cause trouble if we tried to go on without them; and that two mills could not be bought or leased, and that we would have to make a traffic arrangement, and that there were two mills building—three mills building, two in Nebraska and one in Illinois, with which we could not make any arrangement. That was the first conversation with Mr. Stein and Mr. Church.

Q. Were any subsequent statements made to these gentlemen in which they agreed to take in seventy mills?

A. That first conversation took place in February, 1892, and the next conversation was soon afterwards, and I think that occurred at Mr. Stein's office, which was in the Pullman building at that time, and at that conversation we made arrangements to meet here in Chicago again, and did meet at the Wellington hotel, and I think at that meeting there were present Messrs. Church, Stein, Trebein and John B. Halladay, and at that meeting I produced this list, and we discussed the question of how much they would cost and I placed before them the amounts of the former options and they went over each one and estimated what they could get them at, and whether at a lower figure, and we went over all seventy mills and discussed some of them, for instance, I remember our discussing the Indiana Paper Company.

Q. You need not go into those details. Have you now stated all, or substantially all of your answer?

A. You interrupted me.

Q. I ask you again, if you have?

A. You asked me not to go into details.

448 Q. What further statements were made to you, if any, to the effect that the parties, or some of them, would purchase the whole of the seventy mills, and when and by whom were they made, if any?

A. At these first meetings, they were meetings more of inquiry on the part of the other gentlemen as to the condition of the wrapping-paper trade and the number of mills employed and so forth, and as a result of these meetings, and in order to enable Mr. Stein to go and see Mr. Beard and Mr. Ramsdell in Buffalo, I drew up and handed him two statements, one called a "private statement" and the other called a "general statement," and at the same time that I made these statements for him, I made an exact duplicate and kept myself and now have them here.

Q. I am not asking you what you did, and object to your production—

A. I am trying to answer your question.

Q. You understand very well, I am not asking you what you did, but what other people did and said. Have you any, are there any further statements made by them that you have not already testified to?

A. I do not just now remember, I know that these conversations seemed satisfactory to the others. Mr. Stein took these statements and said he would go down and see Mr. Beard and Mr. Ramsdell, and all our conversation was on the basis of the seventy mills, and in addition to that I will say that at the time we finally agreed on

my receiving this \$25,000 of stock, it was based on all the seventy mills being in, for the reason, I would never have taken it if one-half the mills were left out, because the organization must be unsuccessful, not having the others to act with them.

Q. I will ask you again, were any further statements made by these gentlemen, or either of them, to the effect that all these seventy mills should be obtained by the corporation to be formed?

A. Yes, sir, all these gentlemen spoke in their conversation to me, of seventy mills going in.

Q. State what these gentlemen said, which of them it was, and what he said, if you have not stated it already?

A. I presume that I have stated everything; we talked these matters over and they never said to me—

Q. No, I am not asking that.

A. I am going to answer the question my own way.

Q. I am asking you for statements that these parties made to you?

Mr. GRESHAM: Do you mean you want the exact language?

449 Mr. DUPEE: I want the language or the substance of the language, and the names of the parties and the place.

A. They never said to me otherwise than that the seventy mills were to go in, never suggested that there were any changes to be made, that any number of mills were to be left out, but on the contrary when we came to taking options about the first day of July, 1892, the territory was divided up, Mr. Church was to take all west of the Indiana line and to be assisted by Mr. Halladay, and Mr. Stein, if necessary; I was to have Indiana and Michigan, Mr. Trebein was to have Ohio and it was the understanding that we should all assist one another in the getting of these options, and as I have stated in my direct examination, I did do so, and the fact is that I took an option on the Hartford City mill in Indiana, and Mr. Stein, Mr. Church and Mr. Trebein were also at that mill to change it, and I had every reason to believe and did believe that the Hartford City mill was going in, especially as it was one of the very best mills in the business, but they left that mill out. The same is true of the Indiana Paper Company, of Michawaka, I took an option there for its product, it was a sort of traffic arrangement—

Q. Mr. Sherwood, you are wandering from the question which is—

A. I wish to show you that I talked seventy mills, they understood seventy mills, and there was no other talk on the subject.

Q. I am asking you whether there were any other statements made by these parties, or any of them that the corporation to be organized should acquire all these seventy mills?

A. There were no other statements made to me than that the seventy mills were all going in.

Q. Were any statements made to you that seventy mills were to go in?

A. Yes, sir.

Q. By whom, if you know, when, and where?

A. The whole conversation had, was on the basis of seventy mills, Mr. Church, Mr. Stein, Mr. Trebein talked it.

Q. Do you mean to say that in every conversation Mr. Church, Mr. Stein, Mr. Trebein had with you about the new corporation to be formed, it was with reference to all the seventy mills?

A. Yes, sir, I never knew otherwise.

Q. Take Mr. Stein, when did he say so, where and in whose presence?

A. In this conversation that I have detailed. Now mind you, after the first of July, after we commenced taking options, I did not meet all these gentlemen in the same way we met before, 450 because Mr. Stein was busy down east arranging the money affairs and calling for options to be sent east, and options were taken down there and examined by Mr. Beard and Mr. Unter-

meyer.

Q. (Last question read as follows:) Take Mr. Stein, when did he say so, where and in whose presence?

Mr. DUPEE (continuing question): —that the new company was to take all seventy mills? Have you any further answer to make to that?

A. No further answer, except that our conversation was always based on seventy mills, and no other number.

Q. Did Mr. Church at any time say that the new company would acquire all the seventy mills, and if so when and where, in whose presence, and what did he say?

A. My answer is the same as to Mr. Church as to Mr. Stein, and also in regard to Mr. Trebein and Mr. Halladay.

Q. You make the same answer as to all?

A. Yes, sir.

Q. On how many mills were options obtained, if you know?

A. I understand from Mr. Stein in his testimony the other day there were thirty-nine; I was under the impression there were forty.

Q. Do you know whether any more options than forty were obtained?

A. Yes, sir.

Q. How many were obtained in all if you know?

A. That I cannot tell you, I have had great difficulty in getting information out of these gentlemen, after the first day of July there was a tendency to keep me in the dark on everything, so much so, I used to write Mr. Trebein complaining—

Q. I hardly think I asked you about that, and as you are a lawyer and accustomed to the rules of examination and cross-examination I presume you know how to answer questions properly?

A. Now what is the question?

Q. (Last question read as follows:) How many were obtained in all if you know?

Mr. DUPEE (continuing): According to the best of your knowledge, how many options were procured altogether?

A. I am not able to state that because Mr. Church—

Q. No, I asked you how many?

A. I am not able to state, I supposed on all.

Mr. ALLEN :

Q. The entire seventy ?

A. No, the entire sixty-seven, three were building.

Mr. DUPEE :

Q. How soon did you first know, have reason to believe, that all of these sixty-seven mills were not brought into the Columbia Straw Paper Company ?

451 A. About May, 1893, I met Mr. Edgar Allan Jacks, the proprietor, one of the proprietors of the Niles, Michigan, mills, which was in my territory, but with whom arrangements were to be made by Mr. Halladay and Mr. Church, and he informed me that he was not in, and he told me of the mills that were not in.

Q. Is that the first time that you had the knowledge or information that some of these mills were not in the Columbia Straw Paper Company ?

A. That is my recollection.

Q. How many of these option contracts did you ever see ?

A. I saw only a few of them, they were kept in two tin boxes in a safe in Mr. Wolf's office, and while I was assisting in closing them up, occasionally it became necessary for one to be placed in my hands and then I saw them.

Q. How many did you see all together ?

A. That I do not know.

Q. About how many ?

A. There were two boxes full.

Q. Did you see most of them ?

A. Examine them, you mean ? No, I did not see but a few of them. I know it was a matter of surprise to me afterwards to learn the size of the options which were so much more than some I had taken.

Q. Did you take some option contracts yourself ?

A. Yes, sir.

Q. How many ?

A. I can name the mills if you wish.

Q. Cannot you count them, add them up yourself, I do not care to cumber the record with them.

A. (After referring to memorandum.) I took and assisted in taking about fourteen mills. Now do you wish me to separate those I took personally ?

Q. No, that is sufficiently definite for the present. Were these options all alike in their general form, so far as you know ?

A. Yes, sir, except a few, such as the Hartford City mill and the Indiana Paper Company.

Q. You stated in your direct examination that the form of options was furnished and said to be prepared by Mr. Untermeyer, one for individuals and firms, and the other for corporations ?

A. Yes, sir.

Q. Were these forms used ?

A. These forms were used with those exceptions that I spoke of.

Q. Do you know whether any of the defendants whose names I have read to you and on whose behalf you have testified, acquired any of the bonds of the Columbia Straw Paper Company?

A. Yes, sir, Mr. Carroll told me that he, instead of taking cash for one-third the purchase-money of his mill, took bonds, as he thought they were a good thing. His was the Clarksville mill, Missouri.

Q. Do you know how many he took?

A. He took ten thousand in bonds, is my recollection.

Q. Do you know whether any of these other parties acquired bonds?

A. Mr. Hooker told me that some time after the formation of the company, being trustee, being the executor of an estate, he took four bonds as an investment for the estate, and I think he now holds them.

Q. Do you know of any more?

A. Those are the only ones that I know of.

Q. How frequently, before the organization of the Columbia Straw Paper Company, did you meet Mr. Harry W. Dickerman?

A. I have never met him yet; I do not know him.

Q. How often, before that organization, did you meet Mr. Henry S. Carroll?

A. I met Colonel Carroll, one of the owners of the Clarksville mill, first in 1889, at his home, and I saw him again at his home in 1890, and I met him on three or four occasions in Chicago, in 1890.

Q. And thereafter, up to the organization of the company, how many times?

A. I do not recall.

Q. Do you recall meeting him at all?

A. I do not know whether I met Colonel Carroll more than once; my recollection is I did meet him once here just prior to the organization of the company, and talked over the company with him, and the prospects of its being formed.

Q. Taking the case of Fred. J. Diem, answer the same question as to him.

A. My acquaintance with Mr. Diem commenced in 1888.

Q. I do not care to have you go back prior to 1891.

A. 1892, you mean?

Q. Prior to 1892, I should say.

A. I met Mr. Diem on two or three occasions in Cincinnati; I went down there to meet Mr. Trebein or Mr. Richardson or Mr. Diem, and I saw him here at Chicago, I think, once or twice.

Q. Will you answer the question as to Freeman Graham, Jr., and Julius Graham?

453 A. Mr. Freeman Graham, Jr., I never saw, except in Rockford, and that was prior to 1892.

Q. How was it with Mr. Julius Graham?

A. Mr. Julius Graham I met several times in Chicago, in 1892, I think.

Q. Prior to the organization of the company?

A. Prior to the organization of the company.

Q. Please answer, in like manner, as to James C. Richardson.

A. James C. Richardson I saw more frequently than any one else, for the reason that he was one of the gentlemen whom I told Mr. Church and Mr. Stein I felt bound to——

Q. You need not give the reasons, just give the number of times; I don't care about that; that is all I am asking, about the number of times?

A. I met Mr. Richardson a great many times.

Q. You stated in your direct examination that you knew absolutely that the parties I have named did not, at the time of the organization of the company, know that the whole seventy plants were not in the corporation. That was hearsay, wasn't it?

A. That was the evidence of these men, backed up by the further fact that Mr. Stein and Mr. Church and Mr. Trebein and Mr. Halladay insisted upon my not telling anything that was going on to the mills, and said that they were not telling anything; that all the mills were interested in was in knowing the amount of capital stock in the corporation, and the amount that they got, and that they got their money.

Q. But it was hearsay evidence, wasn't it, based on hearsay evidence?

A. No, sir. Partly so and partly not.

Q. Well, have you any means of knowing that Freeman Graham, Jr., whom you never saw, did not know that some one or more of these seventy mills were not in the Columbia Straw Paper Company, did not know at the time of its organization that they were not?

A. Well, my statement as to Freeman Graham is necessarily a conclusion arising from the fact that Julius Graham, who took an active part, did not know, and if Julius did not know, I took it for granted that Freeman Graham did not know.

Q. Your statement as to Freeman Graham is therefore based upon what Julius Graham told you, or is an inference from what Julius Graham told you?

A. My inference as to Julius Graham arises from the fact
454 that he told me himself, personally, that he did not know all of the whole seventy mills were not in.

Q. Was that statement made under oath?

A. No, sir; and also the fact that Mr. Stein, Mr. Church, Mr. Halladay and Mr. Trebein continually guarded me against saying that I knew to these men as to the manner and number that were going in, or anything about it, and the fact that I believed myself seventy mills were going in, and took it for granted that nobody else had any other information.

Q. On that foundation you ventured to swear that you knew absolutely that these gentlemen did not know the whole seventy mills did not go into the organization?

A. Yes, sir; and I repeat it now; and I repeat it now that I absolutely believe now that they did not know it.

Q. I suppose you have practiced law long enough to know that a witness has no right to swear to what he believes?

A. Well, he has on occasions; I think I can cite you authorities on that if you will give me a few hours' time; the bill is on information and belief.

Q. And you stated in this examination that you had obtained a copy of the stock book, showing all the stockholders, and a copy of the bond register showing each and every bond held and the number. From what source did you obtain that, Mr. Sherwood?

A. I think it was in March, 1895, possibly as early as February, 1895, when I found, to protect my interests as a stockholder, a fight had to be made on this mortgage and upon the unpaid subscriptions to stock. I immediately took steps to get my information necessary to make the fight, and through one of the directors of the company I obtained a copy of the stock book and a copy of the bond register.

Q. What director was that?

A. That I prefer not to tell. I presume one director has as much right as another.

Q. You decline to state?

A. I decline to state.

Q. What "fight" do you refer to in your answer?

A. What fight?

Q. Yes; you spoke of a fight.

A. The present one we are engaged in; at least I consider it a fight now.

Q. You stated that in order to protect your rights as a stockholder—

A. Yes, sir.

Q. —there had got to be a fight—

A. Yes, sir.

455 Q. —this is your fight, is it?

A. I am partly in it.

Q. Isn't it a fact that you promoted it, induced it and brought it about?

A. Yes, sir.

Q. The whole fight is yours?

A. Yes, sir. I will answer that question by stating that immediately upon finding that my stock was going to be wiped out by the foreclosure of this mortgage and the sale of the mill properties, and that parties to whom I had written a letter, which is set out in Mr. Stein's answer, stating to them that unless my stock was made good to me I should be compelled to go into a court of equity and have a receiver appointed, not only for the bondholders, but also for the stockholders, and also to compel the payment into the company of the unpaid balances of stock, declined to make good my stock to me, I got together all the information I could showing that I was right in my ideas and telegraphed several parties to come to Indianapolis at once; and in picking out my men I chose those whom I knew were of undoubted integrity, amply able to prosecute a lawsuit by means of financial wealth, and I then and there laid

before them all my information and submitted to them whether or not a defense should be made to this suit; and they unanimously approved of a defense being made, and we have that defense here today.

Q. You used the words "in picking out my men;" the men you picked out I suppose were the men who are the defendants for whom testimony is now being taken?

A. Yes, sir.

Q. And it was at your instance that they entered into the defense of the suit and filed their cross-bill, was it not?

A. No, sir. It was at my instance that they came to Indianapolis, and I then laid before them the facts and said to them "Now, gentlemen, it is for you to say whether or not this defense shall be made——"

Q. It was at your instance, however——

A. —and they unanimously agreed the defense should be made."

(Counsel for defendants objects to the last question.)

The WITNESS: I think I am correct in saying that had I not looked up this matter, or had it been that I had no information on the matter, that in that case these gentlemen would have been in ignorance of their rights, and no defense would have been made.

Q. And it was, therefore, through your intervention that this defense was made?

(Objected to by counsel for defendants as a conclusion.)

456 The WITNESS: I have stated facts, Mr. Dupee, exactly as they exist. Now, as to whether it was my intervention these facts will state.

Q. I will ask you if in your judgment it was through your intervention that these men made the defense and filed the cross-bill?

(Counsel for defendants objects to the witness answering the question on the ground that it is immaterial.)

The MASTER: I do not see any objection, Mr. Gresham, to the question. Mr. Sherwood has stated all the facts which led up to taking any action—to the action taken by himself in this case, and I cannot see any objection to his answering the question. Of course it is a matter of his own judgment, and involves his conclusion, but it is a conclusion of fact derived from what he has already stated, and the question has been thoroughly gone into, and it seems to me that no limitations to the inquiry should be implied at this point. I cannot see any objection to that.

A. I will answer that no, with this explanation, that by the term "intervention," as asked for in the question, I understand the implication to be a meddling on my part in business which did not concern me. If it is meant in that sense I answer No. If it is meant in the sense of its derivative meaning of a coming in between two parties, I will say yes—that my intervention or my acts in bringing these parties together and laying before them the facts caused this defense to be made, and I insist that it was no solicita-

tion on my part—it was simply the strength of the facts I detailed to them that caused this defense to be made.

Q. When you picked your men out and got them together, did you read to them the letter which you had written to Mr. Beard and others?

A. Yes, sir; I had a copy of all my correspondence, and I read them not only that letter which appears in the answer here of Mr. Stein's, but I read them a subsequent letter, in which I said to Mr. Beard that I proposed to make this fight and all the things I proposed to put into the cross-bill, and read them every word of the correspondence, my own and Mr. Beard's.

Q. Had these men to whom you addressed the letters you have referred to, come down with twenty-five thousand dollars and made your stock good, should you have picked out your men and got them together, as you say?

A. No, sir, I should have had no further interest in this matter, it was the only way left to me to make myself good, and that was legal means after they refused to do it.

Q. Did you ever see any of these one thousand bonds of the Columbia Straw Paper Company?

457 A. I do not believe I ever saw one of those bonds in my life.

Q. Do you know whether they were negotiable instruments?

A. I only know whether they were negotiable or not by the wording of the copy set out in the cross-bill, and the conditions thereto attached, and I give it as my opinion as a lawyer, that they are not negotiable in the sense of cut-out equities, that is, negotiable in passing from hand to hand, but not negotiable, that everybody takes them.

Q. You are giving this as an opinion, I suppose?

A. I am giving it as an answer to the question.

Q. You are not swearing to the fact, but giving an opinion as a witness?

A. I am under oath, you have asked my legal opinion and I have given my answer on that legal opinion, and I presume I swear to the legal opinion.

Q. You are simply swearing to the legal opinion?

A. Your question is such as to call for nothing but an opinion.

Q. You did get a copy of the stock book, did you?

A. I got a copy of the list of stockholders taken from the stock book.

Q. Do you know whether that is a correct copy?

A. I have every reason to believe it is.

Q. That is not my question.

A. The same information which gave me a list of stockholders, gave me the information that the stock book was in the hands of Guggenheimer and Untermeyer in New York, and I have every reason to believe that it is true, because suit has been instituted within the last few days by the First National Bank of Chicago, by means of the receiver, against Guggenheimer and Untermeyer, in New Jersey, to compel them to deliver up the stock book.

Q. You know very well that is not an answer to my question.

A. That is an answer to your question; Mr. Stein himself testified in regard to these books.

Q. Do you know whether that is a correct copy—what knowledge have you that the so-called copy of the stock book, which you say you obtained, was a correct copy?

A. So far as I have been able to compare that copy, giving the amounts of stock held by stockholders, with persons who held stock, I have found it to be correct, and therefore I judge that it is correct.

Q. But it is a fact that in some respects it may be incorrect, is it not?

A. It may be, but I doubt it.

458 Q. You say also that you have obtained a copy of the bond register of the company showing each and every bond held and the number?

A. Yes, sir.

Q. Did you get that from the same source?

A. Yes, sir.

Q. What knowledge have you as to the correctness of your copy of the bond register?

A. I have no reason to believe it is incorrect and, since Mr. Heurtley's testimony has been taken its correctness has been verified in many particulars by his testimony and I fully believe it to be a correct list.

Q. Do you know it to be?

A. I do not know it to be in the sense that I would know it if I had copied it myself, but the gentleman from whom I got it is a man of such character that he would have no object in trying to deceive me. In the absence of anything else I am very sure it is correct, and I would not believe it to be incorrect until I saw the bond register itself showing something different.

Q. Your knowledge that it is a correct copy is based mainly upon information which has been given you by others, is it not?

A. Prior to the taking of this testimony I should say yes to that question, but since the commencement of the taking of this testimony I will say that my opinion is based now partly on the sworn answers of prior witnesses in this case.

Q. Do you mean to say that there has been any testimony introduced here, which shows, which amounts to a copy of the stock book or the bond register?

A. Yes, sir; a partial copy.

Q. Do you know whether the bond register shows accurately and correctly the present owners of the bonds?

A. I fully believe it.

Q. I asked you if you know.

A. In the nature of the case I cannot tell whether any transfers of the bonds have taken place since that copy of that transfer book was made; that copy was made since the beginning of this suit.

Q. Can you state whether or not bonds which were shown on

the register book were transferred after that time and before your copy was made, but the transfer not shown on the register book?

A. My copy was made so very soon after the commencement of this suit to foreclose that I doubt very much whether any transfers were made—

Mr. GRESHAM: Or have been made—

A. (Continuing)—or have been made since the transfer book was copied from.

459 Q. Or do you know it is the case, is it not, that some of the bonds might have been, some of the bonds shown on the register book may have been transferred a dozen times after the registry of such bonds on the bond book?

A. That would be a very needless supposition after a suit to foreclose was commenced.

Q. Well, before the suit of foreclosure had been commenced?

A. My understanding is that this stock book—that the bond book, my understanding is that this copy of the bond register was made at the time the foreclosure suit was commenced.

Q. And you understand the bonds at the time the foreclosure suit was commenced stood as they did on the bond register?

A. Yes, sir.

Q. Do you know that?

A. I have every reason to believe it.

Q. I am asking you if you know it?

A. In regard to my knowledge, of course I cannot say positively as to things of that kind for the reason that a transfer may be made today and I could know nothing about it, all these bonds might go into the hands of one person and I know nothing about it.

Q. Then the bonds as registered on the register book may have changed hands many times and you know nothing about it?

A. Why, naturally, but it is not very likely.

Recess until 2.30 p. m.

2.30 p. m.—Continuation after recess.

Present: Counsel same as before.

JOHN B. SHERWOOD.

Cross-examination (continued) by Mr. DUPEE:

Q. Mr. Sherwood, did the copy of the bond register about which you testified, show anything more as to ownership than the names of the parties to whom the bonds were originally issued?

A. Yes, sir.

Q. What?

A. The copy showed the numbers of the bonds, and the number of bonds embraced between the numbers, the name of the holders, and their residences.

460 Q. The names of the holders were the parties to whom the bonds were originally issued?

A. The copy did not purport to show the names of the parties to whom the bonds were originally issued, but only the holders of the

bonds at that time, at the time the register was made up, at the time of the registry.

Q. Take the bonds about which you testified in your direct examination which were originally issued or delivered to John D. Hood, did the copy you speak of show these bonds to be in John D. Hood, or somebody else?

A. The copy showed that the bonds issued to John D. Hood were in the names of other parties, except where he may still have held them. I got the original issue from the testimony taken of Mr. Heurtley.

Q. Did the copy show any bonds remained in John D. Hood?

A. No, sir, none whatever, except five bonds, I believe.

Q. Did you ever attend any meeting of the stockholders of the Columbia Straw Paper Company?

A. No, sir.

Q. Where were these meetings?

A. There was a meeting of the stockholders of the Columbia Straw Paper Company held at Hoboken, New Jersey, in December, 1893, and I complained to Mr. Stein that I did not get a notice of that, everybody else did.

Q. Did they hold any other meetings to your knowledge?

A. It is my impression, and in fact I was so informed by Mr. Trebein, vice-president of the company, that at that meeting in December, 1893, the stockholders changed the date of the annual meeting until February, and he told me that the next meeting subsequently would be held in February, 1895, and it is my understanding that there was no other stockholders' meeting.

Q. You never knew of but one stockholders' meeting?

A. That is all I knew of.

Q. You say——

A. Well, there was a stockholders' meeting after—of course there was a stockholders' meeting for the election of directors after the formation of the company——

Q. No, I mean any stockholders' meetings that the company ever had?

Q. In my answer I had reference to the meetings of stockholders after the mills had been taken in, of course, there was a stockholders' meeting for the election of directors prior to the stockholders' meeting in December, 1893.

461 Q. Did you have any notice of that?

A. I had no notice of that.

Q. Were you present?

A. I was not present.

Q. Have you now mentioned all of the stockholders' meetings that you know of?

A. I think so; there was a meeting of some of the mill-owners, together with Mr. Untermeyer, at which I was present——

Q. I am asking you about meetings of stockholders purely?

A. —at which I was present, but I do not think that was a stockholders' meeting; I do not want to say.

Q. You spoke in your direct examination of a bond owned by——

take bond 386—you say bond 386, being one bond issued to Samuel Untermeyer; he still owns it. How do you know he owns it?

A. My copy of the bond register does not say that he transferred it to anybody.

Q. But still, for all you know, he may have transferred it before the commencement of this suit?

A. In answer to this I will say that the best evidence as to the ownership of the bonds are the bonds themselves; the bond register is not like a register of stock, and of course bonds may be transferred around and not show on the bond register.

Q. There was nothing in the charter or by-laws of this company that you know of which required transfers of bonds to be registered was there?

A. In the charter or by-laws?

Q. Yes.

A. I read the charter but never have seen the by-laws. There is nothing in the charter and I do not know what the by-laws contain; the mortgage securing the bonds, and to which the bonds themselves refer, has a provision that the company shall keep a register of bonds, where owners of bonds may register.

Q. If they desire to do so?

A. Yes, sir.

Q. Then do you know that this bond 386 is still owned by Samuel Untermeyer?

A. I have no reason to believe otherwise.

Q. I am asking you as to your knowledge, not as to your belief.

A. I have given my sources of knowledge in regard to these bonds, and from this knowledge, I can say that he owns it.

Q. You are willing to swear that he still owns it on that state of facts and information?

A. I am willing to swear that I believe he owns it.

462 Q. And that in the question which inquires as to your knowledge as to his ownership—what I mean is that you might believe that a man committed murder; does that justify you to swearing that he committed it? You may believe that a man holds bonds, does that justify you in swearing that he does?

A. The circumstances may be such as to warrant the belief, for instance, if two men are in an adjoining room and I know no one else is present and one of them suddenly cries out and I run in and find him on the floor dead, I will swear absolutely, positively that the other man murdered him, although I did not see the act committed, and yet that would be really belief amounting to almost positive knowledge.

Q. And if there were circumstances tending to show that Dr. Parkman murdered Professor Webster and you believed that he did, you would swear that he did, I suppose, the same way?

A. That is the principle by which juries hang men. It is such strong belief that it amounts practically to knowledge.

Q. The ownership of other bonds is based on the same state of things I suppose, isn't it?

A. Yes, sir. To illustrate my point as to knowledge; Mr. Heurtly swears that the interest is not paid on these bonds.

Mr. DUPEE: You need not illustrate it unless you choose, I am not asking for it.

Mr. GRESHAM: He can go on if he wants to.

A. (Continuing)—and yet the interest was not payable except at the office of the Columbia Straw Paper Company. In the nature of things—

Mr. DUPEE: You better go on and finish that sentence, I would like to hear.

A. —in the nature of things, he ought to produce the coupons here to show that they were paid, and if they were not paid he could not in the nature of things, know anything about it, as they were not payable at the office of his company, but at the office of the Columbia Straw Paper Company, and these are the parties who would know whether they had paid them or not, although he swears that the interest was not paid.

Q. You say in your direct testimony that bonds 920 to 924, being five bonds originally issued to John D. Hood, were by him delivered to J. H. W. Dupee. Was that one of the things about which you desired to correct your testimony?

A. In reference to that, I may say that I gave that as I got it from the bond register. I do not know who J. H. W. Dupee is.

Q. Might it be J. H. and W. Dupee, do you know who they are?

463 A. I do not; if it had been Charles A., or Eugene Dupee, I would have known, but I do not know J. and W. Dupee.

Mr. DUPEE: I do not.

Q. You testified in your direct examination that the first board of directors was a board which was elected immediately upon the organization of the company by the three incorporators, Mr. Beard, Mr. Uttley and Mr. Heppenheimer, and they lasted as a board until these other gentlemen were elected, which was in about two weeks, and they resigned one after another and these men were put on afterwards. How did you get that information so as to be prepared to swear to it, Mr. Sherwood?

A. In drafting the answer to the original bill, and in drafting the cross-bill in this case, it is stated that the original board of directors consisted of Mr. Beard, Mr. Heppenheimer, Mr. Church, Mr. Stein, Mr. Halladay, Mr. Frees and Mr. Trebein; and the reason for that is that at a meeting of these parties at the office of Mr. Wolf, at which time Mr. Samuel Untermeyer was present, I was present, and Mr. Charles B. Robertson, a mill-owner at Lafayette, Indiana, was present, that was the board of directors that was then agreed upon. Mr. Robertson and Mr. Richardson were to be placed on the board making nine directors, and Mr. Robertson on that day sat in with them, and in addition to that I had a letter from Mr. Trebein dated October 17th, which is now in evidence, stating that that would be

the board, and inasmuch as this was on the 10th day of December, between the 10th and 17th of December, I think the 10th of December, and the company was formed on the 6th, I stated that that was the original board, but when the answer of Mr. Stein and Mr. Beard were filed, I found that the original three incorporators had elected what I call a false board of directors, or a board of directors consisting of the three incorporators, together with law clerks in the office of Guggenheimer & Untermeyer.

MR. DUPEE: I should be glad, Mr. Witness, to have you confine yourself to the answer and not go into an oration about such subjects.

MR. GRESHAM: Go on and complete your answer.

A. (Continuing :) And therefore the basis of my answering the question as I did in my direct examination is the fact that Mr. Stein and Mr. Beard both stated it in their answer to the cross-bill in this case.

Q. How did you get your information that these men resigned one after the other?

A. That information I got in a letter from a gentleman who is the attorney of one of the present board of directors. At
464 the time of this meeting in Mr. Wolf's office, not one word was suggested that there was any board of directors in existence.

MR. DUPEE: I don't think I have asked you about that.

THE WITNESS: I am giving my information, I have got to show my information on that, it is explanatory of the answer in the cross-bill.

Q. These mills, were these mills, those among the seventy mills that you have referred to in your direct examination, which were not brought into this organization, of much consequence?

A. Yes, sir.

Q. Were they doing much of any business?

A. Yes, sir.

Q. Isn't it a fact that they did comparatively little?

A. No, sir; to illustrate, the Niles, Michigan, mill made fifteen tons of straw paper every day, and it was the largest mill, straw-paper mill, in the United States, with the exception of the one at Rock Falls, which is in the corporation.

Q. Well, were there any others of particular value?

A. Yes, sir; the Hartford City mill, Indiana, operated by natural gas, manufactured ten tons of straw paper every day, and that was one of the largest mills; two mills at Winnebago, Illinois, known as Numbers 1 and 2, owned by Bradner, Smith & Company, made six tons each; the Indiana Paper Company, of Mishawaka, made six tons a day; the Clinton Paper Mill Company, at Clinton, Iowa, made six tons of paper every day.

Q. Who drafted the answer of these defendants for whom this testimony is taken in this case?

A. Mr. Bluford Wilson and Mr. Otto Gresham, solicitors for the parties, upon information furnished by me.

Q. You assisted in preparing the—

A. No, sir; I gave them the information, and from the information I gave them, they drafted it.

Q. I thought from something you said in your answer you substantially said that you drafted it?

A. Oh, no, sir.

By Mr. ALLEN:

Q. Who furnished the first information to Messrs. Church and Stein with reference to the mills which it was proposed to take into the combination?

A. I furnished the information to these two gentlemen. Mr. Church was a mill-owner, and attended meetings of the mill men and knew them personally, and Mr. John B. Halliday, being a sales agent, knew a great many of these facts, and Mr. Church
465 and Mr. Halladay both knew a great many facts that I did not have to tell them, as they knew them already.

Q. When giving the first information, why did you not take Mr. Halladay into your conference?

A. Because Mr. Halladay was with them, and had information.

Q. Had Mr. Halladay seen other gentlemen in connection with these five parties you have mentioned?

A. Yes, sir; Mr. Halladay was Mr. Church's sales agent, and he had been all through the deal before in 1890, and through his being a sales agent, he was possessed of a great deal of information which he brought in to Mr. Stein.

Q. Who furnished Mr. Church and Mr. Stein and Mr. Halladay the information as to the mills and plants that were formed for the 1890 deal?

A. I brought in a list of the mills, if that is what you mean, but Mr. Halladay knew every one of them before, and Mr. Church knew them.

Q. You stated, in your direct examination, that you presented these gentlemen a written statement which you now had here; can you let me see that?

A. Yes, sir; that is, there are two written statements; do you want them both?

Q. Containing the information spoken of? I would like to see them.

A. This is what they called "A general statement," and this is what they called "A private statement." (Handing same to Mr. Allen.)

Q. (After examining documents and handing same back to witness:)

Did you present any statements in writing, not merely type-written, but statements in writing to Mr. Stein, with reference to the properties which it was proposed to take into the combination?

A. Yes, sir; these are exact copies made at the same time that you have just looked at, all the papers I gave to Mr. Stein to take

down east with him, and he told me he did take them down east with him, and evidently he did, because Mr. Untermeyer in his answer—

Q. Wait a moment; I will help you out on that. You are stating more than you know. The statements you now refer to, are simply typewritten, are they not? Do they contain any writing? Will you look at them and state?

A. I do not understand you.

466 Q. You have referred in your original testimony to certain statements which you prepared, and which you said you had here?

A. Yes, sir.

Q. Have you those in your hands now?

A. I have.

Q. Will you look at them and say whether they are all type written or not?

A. They are partly typewritten and partly in writing, I do not understand you, are you making a quibble about their not being in writing?

Q. No, sir, I am not; I want to know whether they are all typewritten statements?

A. Yes, sir, and at the top of the list of mills are the notations or headings, "Title," "Option," and then "Cash" and then "Preferred stock" and "Common," referring to common stock.

Q. I am referring to penmanship, is there any writing?

A. Yes, sir, there has been an erasure and the word "Iowa" written in ink.

Q. Are there any written explanations in connection with it?

A. I do not see any.

Q. How were these statements used, Mr. Sherwood, in your conferences with Mr. Church, Mr. Stein and these other gentlemen preliminarily, and which you say were subsequently taken to New York?

A. Mr. Stein wanted something in writing to take down to New York to explain to these parties, and I got this up and gave them to Mr. Stein.

Q. How did Mr. Stein get them, these statements?

A. I gave them to him.

Q. Handed them to him?

A. Handed them to him.

Q. Now, you can go on with your statement.

(Last question read.)

A. When we met at the Wellington hotel, Mr. Stein, Mr. Church, Mr. Halladay, Mr. Trebein and myself—

Q. Can you give the date of that meeting?

A. I can refresh my memory.

Q. Was it in February or March?

A. This meeting, I think, must have been along in April, I judge so, maybe in May.

Q. After certain earlier meetings?

A. Yes, sir. At that time we went over the options on the mills, and my recollection is that I got up this statement in good shape for Mr. Stein to take down to New York quite soon after that.

467 Q. And then had another meeting?

A. It is a question whether I sent them to him in a letter; you understand that I went home; I was living at Lafayette, Indiana, at that time, or whether I handed them to him.

Q. You said before that you gave them to Mr. Stein?

A. I did, that is true.

Q. Did you give them by letter or by hand?

A. My recollection now is, he had them and went over them and I wanted to get them up in nice shape and took them home with me to get them up in good shape.

Q. Then your present recollection is that the first prepared statements which were considered in the meeting, there were some changes made in them?

A. No changes were made, these men gave their *weights and everything*, and got in options a good deal lower than I had, but it subsequently turned out they got them a good deal higher.

Q. Then the statements which you have now shown or referred to are all typewritten excepting the changes shown in ink, the changes you have referred to were the only ones you submitted to Mr. Stein and these gentlemen in connection with the enterprise at that early stage?

A. That is my recollection; it may be—they were asking for a great deal of information at that time, and I may have handed them over other papers, but I know the boiled down quintessence of the information was contained in these statements.

Q. Where were you living at that time?

A. Lafayette.

Q. How long had you been living at Lafayette?

A. I was born there.

Q. When did you go to Indianapolis?

A. The first of June, 1894.

Q. Subsequent to these interviews and after the New York negotiations to which you have referred, you took hold with other gentlemen, in procuring options?

A. Yes, sir.

Q. And it was agreed that you should receive for your services twenty-five thousand dollars of the common stock of the company, is that correct?

A. Yes, sir; I preferred common stock because I thought it was worth 15 per cent., that is, that its earning powers were fifteen per cent.

Q. Did you have any expenses connected with the taking of the options?

A. Yes, sir.

468 Q. Were these paid to you?

A. By Mr. Stein.

Q. Did you pay anything in money for your stock?

A. No, sir, everything was in the information given and the services rendered.

Q. Is the twenty-five thousand dollars, or were the twenty-five thousand dollars a portion of the stock which you say was diverted?

A. It is a portion of the stock which Mr. Stein got.

Q. I understand you stated in your direct examination that not a dollar of the stock of this company was paid for except what was issued to the mill-owners, is that correct?

A. I believe it is true.

Q. So do you mean to say yours was not paid for?

A. I believe it was not.

Q. You believe it was not?

A. I thought so at the beginning, but all these developments show me it was not.

Q. So you stand in the position of having twenty-five thousand dollars of stock which you thought in February, 1895, you thought you would make good, which you say was not paid for?

A. It was paid for by me.

Q. How?

A. Why, in the services rendered and information given.

Q. Then it was a part of the stock which you say was appropriated by these people other than the stock given mill-owners?

A. I believe so, yes.

Q. Were there other gentlemen connected with this enterprise who were performing services similar to those rendered by you?

A. No one had this information in regard to the options.

Q. Mr. Halladay did not?

A. No, he did not know anything about the options.

Q. I understood you to say a little while ago that Mr. Halladay did know?

A. I said that Mr. Halladay knew the mills, and who the owners were.

Q. So the only information you gave was as to the options, obtained in 1890?

A. Yes, sir; that was a very important thing to know.

Q. These options expired when?

A. They had been extended, and expired in 1891.

Q. Did you consider the knowledge you had as to the options given in 1890 was worth twenty-five thousand dollars?

469 A. Yes, sir, and I thought more.

Q. So you think the imparting of that information represented twenty-five thousand dollars?

A. Yes, sir, because it represented to me four years of very hard work, which it took to obtain it.

Q. When was the first option taken in the "1890 deal," so called?

A. They were commenced in 1888.

Q. Who are they?

A. August 21st.

Q. Who were "they," whereabouts did you spend the four continuous years from 1888?

A. I said I commenced August 21, 1888.

Q. And the options were all procured, the last one, at what time?

A. The last option?

Q. Yes, in the 1890 deal.

A. They were ready to close the options in 1890, in April.

Q. What time did you begin in 1888?

A. August 21st.

Q. So that the four years' work you say are worth twenty-five thousand dollars?

A. Now you are going into this you will find there is a good deal of work to be done. Now, if you are going into the——

Q. Very well, I will withdraw the question.

A. I am going to answer the questions in my own way.

Mr. ALLEN: Yes, you seem to be doing that.

Q. Were there other gentlemen connected with the organization of the Columbia Straw Paper Company in 1892, who rendered services similar to you except as to getting the information as to the options of 1890?

A. Mr. Church took options and Mr. Untermeyer got one option on the mill at Coshocton and Newark.

Q. Have you answered the question as fully as you can?

(Last question read.)

A. Mr. Stein, Mr. Trebein, Mr. Church, Mr. Halladay were also engaged in taking options, but I want you to distinctly understand, Mr. Allen, that the whole point in this thing is this, that having given these gentlemen the information as to the value of the mills as put upon them by the mill men themselves, they were able to take those options, whereas, without that knowledge, they would not have been able to get them; the fact that Mr. Stein was willing to give twenty-five thousand dollars of common stock for this information shows it must have been of some value.

470 Mr. ALLEN: I did not ask you its value.

The WITNESS: I am giving you the facts.

Mr. ALLEN: Then go on and give them.

The WITNESS: I will if you will allow me to answer the questions. The witness states here that he is the judge of what an answer should be, because he has the knowledge.

Q. Then the gentlemen you have now named were the only ones who performed services in connection with the taking of these options and doing any work in obtaining them prior to the organization of the Columbia Straw Paper Company?

A. I do not know as they are the only ones, because Mr. Beard himself received from me the option on the Hartford City mill, sent him by express from Fort Wayne, Indiana, and immediately thereafter I received a telegram, I received a letter from Mr. Church enclosing a telegram from Mr. Stein, of New York, saying that I must send options to him; that it was a mistake to send to Mr. Beard.

Mr. ALLEN: I do not consider that responsive.

The WITNESS: Yes, sir; as it shows that Mr. Beard was engaged in these options.

Q. So that the only option work that Mr. Beard performed was receiving an option from you by mail?

A. I do not know.

Q. How were these gentlemen paid, whom you have named; do you know?

A. Yes, sir; they took and got this stock, made a division of it and Mr. Church's mill, which he had agreed with me, in the presence of Mr. Stein, originally to put in at one hundred and fifty thousand dollars, as shown by that statement, he put in at a larger figure. I found out about it, and spoke to Mr. Trebein about it; he spoke to Mr. Beard about it, and on one occasion, when I was up here, they had some kind of a racket about it, and I do not know how they finally fixed it up.

Q. That is your answer?

A. That is my answer, and he got an extra price on his mill.

Q. Your services, then, as I understand, were paid for by the syndicate, or whatever you choose to call them, who were engaged in forming the Columbia Straw Paper Company?

A. Yes. Originally we wanted to deal direct with Messrs. Beard and Ramsdell, and met them here, and they insisted that everything should be done through Mr. Stein.

Q. Yes, I remember you testified to that on direct. Did you receive any other compensation, Mr. Sherwood, for your services in procuring options on any of these mill properties?

A. No, sir.

471 Q. Were you paid anything by any of the mill-owners for making sales for these people for whom you were obtaining options?

A. No, sir; except on August 21, 1888, Mr. Charles D. Robertson, of Lafayette, came into the office and told me that if we could form a trust, get him into it, he would pay me handsomely, and consequently, when it came to taking options on the properties, I absolutely refused to take an option upon the Lafayette mill because I felt it would be an indelicate and improper thing for me to take an option on a mill where I was interested in the purchase price, and for that reason the option was taken by Mr. Trebein, and I never had anything to do with it, and afterwards Mr. Robertson refused to pay me and I sued him.

Q. For what?

A. For fifteen thousand dollars.

Q. For what? I do not mean the amount. What did you sue him for; what was the ground of your action?

A. Upon the original contract I made with him to get the trust formed, and I compromised the case for twenty-five hundred dollars, finally.

Q. Mr. Robertson originally agreed to pay you a certain amount to form a trust?

A. No, he did not; to buy his mill.

Q. If a trust was formed, you say; that was in 1888?

A. Yes, sir.

Q. And that plan was abandoned, was it? The 1890 plan was abandoned?

A. The plan never was abandoned.

Q. The deal, call it what you please?

A. There were a half a dozen, more or less; there was a deal which fell through on account of the Baring panic, and there was a deal of the mills themselves which failed, and there was a deal where Price and Thomas were interested that failed, and the American Straw Board deal.

Q. You sued Mr. Robertson for fifteen thousand dollars for bringing about a condition which enabled him to get his mill into the combination of 1892?

A. Yes, sir.

Q. And you received twenty-five hundred dollars for it?

A. I did, under a compromise of the claim.

Q. Did you, in connection with your suit against Mr. Robertson, ask Mr. Beard or any one else connected with the Columbia Straw Paper Company, to give you a letter stating you never had been employed by the Columbia Straw Paper Company?

A. I wrote a letter to Mr. Beard and he answered it, and I have got that letter. Do you want it?

472 Q. You did ask him to write that it was a fact you had not been in the employ of the Columbia Straw Paper Company?

A. Yes, and it was a part of my contract with Mr. Stein that I should be employed as attorney for this company, that was part of the consideration for taking the twenty-five thousand dollars stock. They never did employ me, they kept from it, and when I assisted them in taking these options, and assisted Mr. Wolf and Mr. Dupee, they insisted that I must consider myself as not being employed by the Columbia Straw Paper Company, that I should receive no compensation for that and I did not receive any, and when it came to my suit with Mr. Robertson, his proposition was, in defense of the case, that I was employed by the Columbia Straw Paper Company—

Q. To do what?

A. That I was employed by the Columbia Straw Paper Company.

Q. To do what?

A. I do not know; that was his defense.

Q. That that would be a defense to his action?

A. That is what he claimed, so we compromised and so I came to write to Mr. Beard to back up my statement that the Columbia Straw Paper Company did not employ me.

Q. Now, as I understand it, the statement which you say you submitted to Mr. Stein and these other people, stated the prices, the options which had been obtained by you and others on these mills—for the 1890 deal?

A. Yes, sir; there were one or two of these mills that had been built afterwards, and options were put in on estimates.

Q. In the *opinions* which you obtained for the 1892 deal, were any mills included which were not on the list of the 1890 deal?

A. Oh, yes.

Q. How did the prices which you obtained in 1892 through your personal efforts, compare with those which were obtained in 1890?

A. My recollection is they were about the same. I can refresh my memory if you wish.

Q. Can you state any difference, any items of difference?

A. I do not remember any at present.

Q. Who obtained the option on the Lafayette bill?

A. Mr. F. C. Trebein. I absolutely had nothing to do with it, and under the circumstances I told Mr. Robertson to put his own price on his mill, that I could not help him in that.

Q. Do you know the consideration in the option on the Lafayette mill?

A. Yes, sir.

473 Q. 1890?

A. Yes, sir. The option price originally given by him was seventy-five thousand dollars and we cut it down. Mr. Barbour of the American Straw Board Company and others got in there and he agreed to take sixty thousand dollars, and then after that we had Mr. Richardson go there on the third day of July, 1890, and see it and report, and he reported that fifty thousand dollars was a good price, but could not get any better price than sixty thousand dollars; but they never accepted that option.

Q. What was the option price in 1892?

A. Mr. Trebein told me he took it at \$123,000, I believe.

Q. Can you tell me what the 1890 option was on Mr. Richardson's mill—the Monroe mill—the Mr. Richardson who is one of the cross-complainants in this case?

A. I can almost.

Q. Tell approximately, will you?

A. Let me refresh my memory. I think it was \$30,000.

Mr. ALLEN: That is right.

Q. And what was the amount paid Richardson in 1892?

A. My recollection is \$35,000.

Q. Wasn't it \$45,000?

A. It may have been; I don't know. I know this, that Mr. Trebein told me that he had increased his price, and I was under the impression it was about \$5,000. When I think of it, it must have been \$45,000, because he holds \$15,000 of this stock.

Mr. ALLEN: That is right.

Q. Who were the owners of the Clarksville mill?

A. That was owned by the Clarksville Company.

Q. Mr. Carroll, about whom you testified, was interested?

A. Yes, Henry S. Carroll was president.

Q. Do you remember the 1890 option price on his mill?

A. I think it was \$20,000. I will look and see (referring to memorandum); \$25,000 it was then.

Q. What was it in 1892?

A. Thirty thousand dollars, I think ; at least he——

Q. Did Mr. Beard and Mr. Stein have any knowledge about paper mills prior to this deal in 1892?

A. None whatever.

Q. You have stated in answer to one of Mr. Dupee's questions, or you used the expression, that after you wrote the letter which is quoted in the answer to your cross-bill——

The WITNESS: Answer of Mr. Stein ; don't say my cross-bill.

Q. (Continuing)—that if these gentlemen declined to pay
474 you would do certain things. Did they decline to pay—did you receive any response to the letter?

A. I took it they declined to, because I never heard a word from them.

Q. You sent several letters?

A. Yes, and never heard a single word.

Q. Can you state to whom you sent those letters?

A. Yes, sir; Mr. Stein, Mr. Beard, Mr. Church, Mr. Trebein, Mr. Higgins, Mr. Brown and Mr. Samuel Untermeyer. They were addressed in an envelope, with my name on it, so I presume they all got them.

Q. When did you first learn of the filing of the foreclosure bill in this case?

A. I learned it in the Indianapolis Journal the next morning.

Q. Did you, prior to the filing of your cross-bill in this case, apply to Mr. Beard or Mr. Stein or any officer of the company for information as to its affairs?

A. I did not, I knew it was unnecessary.

Q. Did you apply to them after you learned of the filing of the foreclosure bill as to any of the subjects which are set up in your cross-bill?

A. No, sir, they had refused to answer my letters and I knew it was no good to do so; I got my information from other sources.

Q. After waiting a reasonable time and these gentlemen did not answer your letter of February 8th, you picked out certain mill-owners and wrote to them, is that correct, about what you supposed to be the condition of affairs?

A. My recollection is that I gave them in that letter until the 21st to answer it, and then as soon as the 21st came and I had no reply from any of them, I went to work and got my information, and after I got my information and was fully advised, as I thought, I then sent to such of the mill-owners as I believed had pecuniary ability and the nerve to go through with it.

Q. And after that there was a meeting at Indianapolis of these mill-owners?

A. Yes, at my office.

Q. Can you tell me who were present at that meeting?

A. Yes, sir, Mr. James C. Richardson, Colonel Henry S. Carroll, Mr. John A. Buckstaff, Mr. Julius F. Graham, I think it is Julius F. Graham, Mr. George E. King, vice-president of the Second National Bank of Rockford, Illinois.

Q. Was Mr. Dickerman present, did you say?

A. No, sir, I stated I never met Mr. Dickerman.

475 Q. Was Mr. King a mill-owner?

A. Mr. King represented the Second National Bank of Rockford, Illinois, which is a stockholder.

Q. How is it a stockholder, is that through the Grahams?

A. I do not know; they owned four hundred shares of preferred stock.

Q. These gentlemen, you then considered financially responsible to pay fees and other expenses attendant upon the prosecution of this cross-bill?

A. I did not say so.

Q. I asked if you thought they were, or not?

(Objected to by counsel for defendants as immaterial.)

A. I took these gentlemen, because, as I told you, I thought they were financially able to pay the costs in this case, and because I knew they were men of such standing in the community where they lived, that my cross-bill and answer would bear upon the very face of it some weight.

Q. Did Mr. Buckstaff justify your expectations in that regard?

A. Mr. Buckstaff was very enthusiastic for it until recently, when his lawyer advised him that he could get possession of his mill on the ground that this was a trust, and he preferred to bring his suit there at home.

Q. Did the Messrs. Graham meet your expectations?

A. Mr. Graham I understand has made an assignment for the benefit of his creditors, although at that time he was rated at two or three hundred thousand dollars.

Q. When was this meeting?

A. I am unable to give you the exact date, do you want it?

Mr. ALLEN: No, I do not care for it.

Mr. GRAHAM: April last?

The WITNESS: Yes, early in April. Put it that way; I assure you it was just as soon as I could get them there.

Mr. ALLEN: Now, referring to this statement which you presented to Messrs. Beard and others, showing some sixty-seven or seventy mills, you testified that you had no knowledge which led you to believe that anything less than that entire number of mills would be taken into that combination?

A. That is right.

Q. Have you ever written anything on that subject?

A. Not that I know of.

Q. You would not have written anything indicating that there were a less number to be taken in, and testified that there were not?

A. No. There was this point about it, that some of these mills which were very small and had not been running, there
476 was an understanding had that the deal should not stop by reason of them, for instance there was a mill in Shiawassa—

Q. Then there were some of the sixty-seven mills that were not to be taken in?

A. They were to be taken in.

Q. Is it not the case that they were not?

A. There were several mills that were such that they were not going to wait to get options on them, for instance, the mill at Shiawassa, and one at Dakota, Iowa, but they were to be taken in. The deal was not stopped because they had not been, that was the understanding. When Mr. Edgar Allen Jacks, of the Niles, Michigan mill, told me they had no option on his mills I was simply astounded when I found they hadn't.

Q. So you never had reason to believe, or make any statement in writing to the effect that any less than the entire sixty-seven mills were to be taken in?

(Objected to by counsel for defendants as having already been gone over.)

A. That is my present recollection.

Redirect examination by Mr. GRESHAM:

Q. Will you please state what the statement you gave Mr. Stein showed as to the number of mills, the location, and the amounts for which they could probably be secured?

Mr. DUPEE: Is that a statement in writing?

Mr. GRESHAM: It was in writing, but it was given to Mr. Stein. That was part of the conversation, and I ask that it go in as part of the conversation.

Mr. DUPEE: I object to testimony as to contents of any written instrument.

Mr. GRESHAM: It was a schedule, not a written instrument.

Mr. DUPEE: Consequently in writing?

Mr. GRESHAM: Yes, sir.

Mr. DUPEE: I had it accurately then, I object to testimony as to the contents of any written document.

The MASTER: There can be no doubt of course in regard to the rule which has been recognized in the examination, and I do not see, Mr. Gresham, as to how it is competent to put that in.

Mr. GRESHAM:

Q. Then I will ask the witness if he has an exact copy of the schedule of the mills, with the prices at which they might be purchased, which was given Mr. Stein for the benefit of himself and the gentlemen who were associated with him in organizing this corporation, if so, to answer the question yes or no.

477 A. I have.

Q. Have you that copy with you at the present time?

A. I have. In addition, it shows the tonnage of each mill.

Counsel for defendants offers said copy in evidence.

(Counsel for complainants objects to the introduction in evidence of a copy, and insists that the original shall be shown, as it is still secondary evidence when there is a possible better evidence.)

The MASTER: I suppose the original should be produced, Mr.

Gresham—that is, I do not suppose it is competent as an original proposition in evidence to produce a copy of a document which has been referred to—that is, I do not understand exactly how you can do so for the reason in this particular case it is for the purpose of showing the information. The witness testifies to the fact that he did furnish a statement. He is called upon to testify in regard to the contents of a written document, but that is another thing. He is called on to produce a copy; I do not see how that can be done at once at this time; it seems to me that the basis is not laid to justify the use of a copy. I do not see how the copy can be competent.

Testimony of F. P. Leffingwell.

FRANK P. LEFFINGWELL, called as a witness on behalf of certain defendants, was examined by Mr. Gresham, and testified as follows:

Q. Please state your name.

A. Frank P. Leffingwell.

Q. You are an attorney-at-law at this bar?

A. Yes, sir.

Q. And have been a number of years?

A. For about fifteen.

Q. You were attorney for James Flanagan, I believe, in a suit which he brought before Justice Underwood on January 22d last, were you not?

A. Yes, sir.

Q. Where did you get the coupons on which you brought the action for Mr. Flanagan?

A. From, as I recall it, Henry M. Wolf, of the firm of Dupee, Judah, Willard & Wolf, lawyers, Chicago.

Q. Had you ever known Mr. Flanagan up to that time?

A. No, sir.

478 Q. Did you ever have any correspondence with him prior to that time?

A. No, sir.

Q. What was the date, if you recollect, on which Mr. Wolf gave you the coupons on which you brought the action on behalf of Mr. Flanagan?

A. That suit was commenced by me on the 22d day of January, 1895, and my recollection is that I received the coupons from Mr. Wolf on that same day, possibly the day before. I had not had them in my hands, I will say more than twenty-four hours, before I commenced the suit.

Q. What instructions, if any, were given you by Mr. Wolf with reference to bringing the suit against the Columbia Straw Paper Company for Mr. Flanagan?

A. Whether it was in the form of instructions or not I could not say, but my recollection is he put them in my hands with a remark to the effect that he or his firm represented interests which made it not desirable to act for Mr. Flanagan, and Mr. Flanagan, as I recall

it, had sent them to him or his firm for the purpose of having them put in judgment.

Mr. GRESHAM: That is all?

The WITNESS: That is in effect what he said to me.

Testimony of J. D. Hood.

JOHN D. HOOD, called as a witness on behalf of certain defendants, being first duly sworn, was examined in chief by Mr. Gresham and testified as follows:

Q. Please state your full name.

A. John D. Hood.

Q. Where do you reside?

A. 4000 Ellis avenue, in this city.

Q. How long have you lived in this city?

A. All my life, twenty-eight years.

Q. What is your occupation?

A. I am an attorney.

Q. How long have you been practicing law?

A. Since the spring of 1893.

Q. Where did you study law?

A. At the Northwestern University law school.

Q. In whose office were you ever a student or clerk in this city?

A. I entered Dupee, Judah & Willard's office as a student and clerk I think in the fall of 1892.

479 Q. I will ask you to look at that paper (handing same).

A. Yes.

Q. Did you ever see it before?

A. Yes, sir.

Q. It purports to be an order by the Columbia Straw Paper Company on the Northern Trust Company requesting the Northern Trust Company to deliver to you twenty-eight bonds of the Columbia Straw Paper Company, dated April 12th, 1893. Did you receive these bonds from the Northern Trust Company?

A. I have no recollection of that independent of this receipt, I recognize my signature on this paper and presume from that that I received the bonds at the trust company's office.

Q. For whom did you receive these bonds; do you know?

A. I acted merely as a messenger from Dupee, Judah & Willard's office in drawing the bonds from the trust company.

Q. Do you know what Dupee, Judah & Willard did with the bonds after you delivered them?

A. I do not, I have no knowledge of that.

Q. What member of the firm, if you recollect, sent you for these bonds?

A. I think Mr. Wolf was the one.

Q. You know nothing then of the transaction aside from the fact that you were a messenger from Dupee, Judah & Willard's office in procuring the bonds?

A. I know nothing of it, no.

Q. I wish you would look at this receipt dated April 18th, 1893, calling for twelve bonds. I will ask you if you know anything about the transaction beyond the fact that you acted as a messenger in going from Dupee, Judah & Willard's office to the Northern Trust Company and receiving the bonds?

A. No, I have no recollection at all independent of what the paper bears on the face of it.

Q. And returning to Dupee, Judah & Willard's office, and returning them to Dupee, Judah & Willard's office, and that transaction was done through Mr. Wolf?

A. All of these bonds were either delivered to Mr. Wolf or delivered under his instructions. I do not remember to whom they went or anything about it.

Q. Then in short that would be your answer with reference to the one hundred and sixty seven bonds which these receipts call for running to yourself, April 12, 1893, to July 16, 1893?

A. I have no recollection independent of the receipts which appear to have my signatures for the bonds.

Q. And the only part which you took in the transaction was simply to go to the Northern Trust Company and procure
480 the bonds and deliver them to Mr. Wolf on behalf of the firm of Dupee, Judah & Willard?

(Objected to by counsel for complainants.)

A. I do not know on whose behalf, I know they were either delivered to him or by his directions to other parties.

Q. What do you know about these bonds being delivered by his directions to other parties?

A. I merely made that statement that I might not be misunderstood, it is possible I did deliver them to other parties, if so, I have no recollection of delivering to any parties besides Mr. Wolf.

Cross-examination by Mr. DUPEE:

Q. I understand from Mr. Gresham's questions that these receipts for bonds were during the period from April 12, 1893, to July 16, 1893. Were you during that period in the employ of the Columbia Straw Paper Company?

A. Yes, I had charge, I think, of nothing but the stock books, and I think I had the stock books in my possession at that time for several months.

Q. It was part of your duty, acting for the Columbia Straw Paper Company, to keep these books, was it?

A. Yes, sir, that was in fact all I had to do.

Redirect examination by Mr. GRESHAM:

Q. Where were these books kept at the time you spoke of?

A. They were in the office of Dupee, Judah & Willard, in my desk, just as other matters that I had special charge of, were kept.

Q. When that stock was issued, was record made of it, or the stock book and stub shows?

A. Certainly, I think that was the only record that was kept.

Q. What portion of the stock of the company was issued during that time?

A. I have no recollection, that is a matter of record, I think.

Q. Now on these orders during that period, would you issue a certificate of stock to a party?

A. Well, so far as I can recollect, the books when they came to my hands, contained only stubs of the original issue, and that my work was in regard to transfers and splitting of shares, and my impression is that all that was done on letters from Mr. Stein and Mr. Beard and possibly some from Mr. Brognard.

481 Q. Do you recollect about the date when you began to take charge of this stock book of the Columbia Straw Paper Company?

A. I can really only guess at it from the fact that I went into the office in September, and I think it is a couple of months thereafter when this work came in.

Q. September, 1892?

A. Yes, sir.

Q. And a couple of months thereafter?

A. About that; I cannot say, exactly.

Q. What is your recollection, if you have any, as to what number of shares of the stock had been issued at the time the stock book came into your hands?

A. I have no recollection at all on that.

Q. Had it all been issued?

A. I could not say, now, whether it had all had been issued; I know that there was a considerable portion already issued; that is, the certificates, the number of certificates out of the book. Some of them, I presume, came back and were reissued by others.

Q. Now, when a certificate came back, or an order came back to be canceled and certificates to be reissued, were the canceled certificates attached to the stubs?

A. In every case, while in my hands, they were attached to the stub of a corresponding number in the proper book.

Q. And you would not issue a new certificate without having the old certificate?

A. No; and not without directions from Mr. Beard or Mr. Stein.

Q. Did Mr. Wolf ever give you any directions with reference to that? Issuing certificates of stock?

A. I do not recollect anything of that.

Adjourned to 10 a. m. following day.

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Testimony of J. B. Sherwood.

THE NORTHERN TRUST COMPANY ET AL. } In Chancery. No.
 vs. } 23614.
 COLUMBIA STRAW PAPER COMPANY ET AL. }

Testimony taken before Henry W. Bishop, master in chancery, Saturday, January 4, A. D. 1896, at ten o'clock in the forenoon, pursuant to adjournment.

Present: Mr. Dupee, Mr. Allen, Mr. Gresham.

Mr. ALLEN: In answer to the notice to produce copy of the proposition made by Mr. Stein to the company, I wrote to the secretary's office, New York city, and received from him, not the proposition, but a contract which was made at a time subsequent to the passage of the resolutions, the original contract executed by Emanuel Stein and the Columbia Straw Paper Company, which is subject to your inspection if you desire. I also found in Chicago a copy of the proposition which was made by Mr. Stein to the Columbia Straw Paper Company, which I offer in answer, if you desire, to your notice. The original I have not here. I am informed this is a true copy. Personally I know nothing about it. The original, I presume, can be produced. I merely produce this to facilitate the proceedings.

Mr. GRESHAM: Did Mr. Stein say it was a correct copy?

Mr. ALLEN: I did not obtain it from Mr. Stein, but from Mr. Wolf, who stated he understood it to be a correct copy of the proposition submitted.

Mr. GRESHAM: Mr. Stein would know, as a matter of fact, whether it is?

Mr. ALLEN: Mr. Stein stated to me he did not remember about it, that is the fact about it, but as it is in line with what is stated in the resolutions, I presume it is a true copy, although there is an evident error in stating the schedule attached, it should be A and B.

Mr. SHERWOOD: Referring to page 196 of the record, in answer to Mr. Dupee's question, "For each bond?" I answered "Yes." I misunderstood the question if I so answered, and what I meant was twenty per cent. and forty per cent. on each bond, or twenty shares of preferred stock with the ten bonds, and forty shares of common stock with the ten bonds.

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JOHN B. SHERWOOD.

Recross-examination (cont'd) by Mr. ALLEN:

Q. I would like to ask you another question, in view of a question asked by Mr. Gresham on redirect yesterday after I left. Was the statement about which Mr. Gresham has asked you, the only statement you presented to Mr. Stein covering the points you mention?

A. No, there were a number of statements of one kind and another during the different conferences, but this was the one statement he was to take down East to show to parties.

Q. This was the final statement?

A. I should call it, yes.

Q. And about which I have already interrogated you, and in which you stated there was no written matter, except a few things you specified?

A. That is my recollection.

Q. You stated the copy that you had in your hand yesterday was an exact copy of the one submitted to Mr. Stein?

A. I said that was my recollection.

Q. Do you remember now whether or not it is an exact copy?

A. I say now it is my recollection it was an exact copy; it may be that after I got here further information was asked and I wrote it down. If there are any additional statements, they are in hand-writing and not typewritten.

Q. It is possible there are, that you may have so modified the statement that you then had after the statement was made that you now have was made?

A. I say now I have no recollection.

Q. Is it possible you may have so modified it so that the seventy mills named were not to be included, or the sixty-seven mills?

A. No, sir.

Q. You never in writing indicated in any way to Mr. Stein or these other gentlemen that there were to be less than the seventy mills taken into the combination?

A. Not that I know of, as I said yesterday, Mr. Allen, all seventy of the mills were to be taken in; that there were some mills which were not running, and that it would not be necessary to stop the organization of the company to get them in, but mills like the Hartford City, Indiana, and the Niles, Michigan, Paper Company, large active mills, they were to be taken in.

484 Q. Of course, Mr. Sherwood, if, as you have already testified, the sixty-seven or seventy mills were to be taken in, if you had at any time in writing stated anything else, you would remember it, would you not?

A. I should think so.

Q. So the chances are, to the best of your recollection, that you never have written anything indicating that a less number were to be taken in?

A. Yes, that is true.

Q. Can you say whether you did or not?

A. I should—I say I did not.

Q. You cannot state positively?

A. I should state positively.

MR. GRESHAM: At this point I will make a motion that Mr. Stein be required to produce the written instrument or memorandum which Mr. Sherwood testifies he has handed to him and which it is

apparent from the examination of Mr. Stein's counsel is now in the possession of Mr. Stein.

Mr. ALLEN: Mr. Stein's counsel is not here present, as I know of; I appear as counsel for the Columbia Straw Paper Company.

Mr. GRESHAM: I make the motion.

By Mr. GRESHAM:

Q. Mr. Sherwood, with reference to this statement, was it not the purport of the statement to show the number of mills in the territory in which straw paper was manufactured and the probable prices at which they could be acquired?

(Counsel for complainants objects to the question as again calling for the contents of a written document.)

The MASTER: If I remember right, the witness stated that seventy mills were to be included in the combination, and then, as a matter of cross-questioning, Mr. Allen asked him something with reference to the same subject, so that if the matter of testifying to the contents of a written instrument is involved at this time, it is the result of the examination of the witness in main. My impression is that the examination ought not to be prosecuted with a view of bringing out matter contained in a written communication. You go on with the examination and if you think it of sufficient importance by and by, I will certify the question, because it lies at the foundation of so much that is important, that if you desire to have the benefit of the certificate, I will make it so it can be presented to the court.

Mr. GRESHAM: We will introduce in evidence the copy of the proposition to Mr. Stein, made December 10th, 1892, to the Columbia Straw Paper Company, reserving the right to ascertain whether it is correct, and to call for "Exhibit A," which is not attached, and which, as I understand it, and as appears from the instrument itself, to be a copy of the options.

(Objected to by counsel for defendants.)

Admitted subject to objection and marked Defendants' Exhibit C, and is in words and figures as follows, to wit:

DEFENDANTS' EXHIBIT C—PROPOSITION.

DEFENDANTS' EXHIBIT C.

(Copy.)

CHICAGO, ILL., *December 10th, 1892.*

To the Columbia Straw Paper Company.

GENTLEMEN: I herewith submit a proposition for the sale to your company of certain properties upon which I hold options, of which I hereto attach a schedule marked "A"—hereby embodied in and made a part of this proposition.

By these options I have the privilege of acquiring certain mills,

plants and factories for the manufacture of straw wrapping paper and other kinds of paper, of which properties I annex a schedule marked "B," hereby embodied in and made a part of this proposition; certain leasehold properties upon which certain of the said mills, plants and factories are situated, of which leasehold properties I hereto attach a schedule marked "C," which is hereby embodied in and made a part of this proposition, and all the appurtenances of said properties, mills, plants and factories, and the businesses conducted upon the said properties, together with the good will thereof, and all the rights and interests in the said properties possessed by their present owners. I undertake to secure to your company a good and indefeasible title to the above-mentioned properties, businesses and good will, and that I shall pay the entire purchase price necessary to secure the same from their present owners in accordance with the terms of the options which I now hold and of which I have hereunto annexed a schedule as aforesaid.

I propose to convey to your company the aforesaid properties, plants, mills, factories, appurtenances, businesses and good will upon payment to me of the sum of five million dollars (\$5,000,000) as follows:

486 *a.* One thousand eight hundred dollars (\$1,800) in cash.

b. One million dollars (\$1,000,000) thereof by the issuance and delivery to me or my nominees of one thousand (1,000) six (6) per cent. mortgage gold bonds of the company, of the denomination of one thousand — (\$1,000) each, being all of a total authorized issue of one million dollars of such bonds secured by a mortgage as a lien or charge upon all the rights, properties and interests acquired by the company from me, and upon all after-acquired property of the company, and upon its franchises and undertaking, so far as such rights and interests are capable of being legally subjected to the lien of the mortgage. The bonds secured by said mortgage shall be redeemable in gold coin of the United States of America of the standard weight and fineness, at a premium of ten per cent. by annual drawings by means of an annual cumulative sinking fund of one hundred and ten thousand dollars (\$110,000), besides which, the interest on the bonds as redeemed shall be set aside, as though the said bonds were still outstanding; and the amount thereof shall be added to and form part of the annual sinking fund for the redemption of said bonds.

The trustees for the bondholders shall be designated by the counsel for the company, and in the event that I shall be unable to convey the properties free from incumbrances, an amount of bonds equal at par to the encumbrances thus remaining on the properties, shall be placed in the hands of one or more of the trustees for the bondholders, together with an amount of the preferred stock of the company equal at par to 20 per cent. of the bonds so set apart, and an amount of common stock equal at par to 40 per cent. of the bonds so set apart, with directions to such trustee or trustees to dispose of said bonds and stock at public or private sale at the earliest possible date; but, in any event, within one year from the date of the issuance of said bonds for an amount of money not less than the en-

cumbrances taken over by the company, to the end that the property shall, as soon as practicable, be held by the company free and clear of all liens, claims and encumbrances, and that the mortgage given to secure said bonds shall be a first lien or charge upon all the rights, properties and interests acquired by the company.

c. The further sum of one million dollars (\$1,000,000) of such purchase-money shall be paid by the due issuance and delivery by the company to me or my nominees, of the entire authorized issue of preferred stock of the company, to wit: certificates representing ten thousand shares of such stock of the total par value of 487 one million dollars, all of which shall be full paid and unassessable, and shall be so expressed on the face of the certificates.

The preferred stock so to be issued shall be cumulative and shall be entitled to cumulative annual dividends at the rate of eight (8) per cent. per annum, payable quarter yearly, before any dividend can or shall be declared or paid on the common or general stock; but the said preferred stock may, at the option of the company, be redeemed at par, at any time after January 1, 1903.

d. The balance of the purchase price of five million dollars (\$5,000,000) shall be paid by the due issuance and delivery to me or my nominees, of twenty-nine thousand nine hundred and eighty-two shares of common or general stock of the total par value of two million nine hundred and ninety-eight thousand and two hundred dollars (\$2,998,200), all of which shall be full paid and unassessable, and so expressed on the face of the certificates.

Respectfully,

(Signed)

EMANUEL STEIN.

SCHEDULE "B."

1, 2	Church Paper Co.....	Rock Falls and Lyndon, Ill.
3, 4	Graham & Co.....	Rockford and South Rock I., Ill.
5	C. B. Robertson.....	Lafayette, Ind.
6	Xenia Paper Co.....	Xenia, O.
7	Vandalia Paper Co....	Vandalia, Ill.
8	Clarksville Paper Co.....	Clarksville, Mo.
9	Cedar Falls Paper Co....	Cedar Falls, Ia.
11	Merchants' nat. bank....	Defiance, O.
12	Lyons Paper Mill Co.....	Lyons, Ia.
13	E. L. Brown.....	Elmwood, Ill.
14	J. F. Clark Paper Co.....	Marseilles, Ill.
15	Ill. Valley Paper Co.....	" "
16	F. I. Bard & Co.....	Knightstown, Ind.
17	W. D. Bradt.....	Jackson, Mich.
18	F. D. Sweetser.....	Ottawa, Ill.
19	Robert Pilcher.....	Joliet, Ill.
20	Massillon Paper Co.....	Massillon, O.
21	H. R. Westervelt.....	Springfield, Ill.
22	Whitewater Paper Co.....	Whitewater, Wis.
23	Lincoln Paper Co.....	Lincoln, Neb.

- 24 A. Heingarten & Co..... New Philadelphia, O.
 25 Ft. Madison Paper Co..... Ft. Madison, Ia.

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- 26 Richardson Paper Co..... Monroe, Mich.
 27 Sandusky Paper Co..... Sandusky, O.
 28 Sterling Paper Co. Sterling, Ill.
 32 Joseph Spiro..... Pontiac, Ill.
 33 Charles A. Miller..... St. Charles, Ill.
 34 May V. Bartlett... Yorkville, Ill.
 35 S. W. Williams... Streator, Ill.
 36 Newark Paper Co. Newark, Ohio.
 37 Coshocton Paper Co. Coshocton, O.
 38 Rhoades, Utter & Co..... Rockford, Ill.
 39 Sangamon Paper Co..... Springfield, Ill.

SCHEDULE "C."

- 10 F. J. Diehm & Co..... Dayton, O.
 29 Hastings Paper Co..... Enon, O.
 30 Lawrence Paper Co.... Lawrence, Kans.
 31 Chas. A. Clark Logansport, Ind.

Mr. ALLEN: I will say in explanation that as I read the copy there is a mistake, that there should be a reference to but two schedules, A and B; I think you will find that is so.

Mr. GRESHAM: The agreement made December 15, 1892, between Emanuel Stein and Julia Stein, his wife, and the Columbia Straw Paper Company, covering the terms by which Mr. Stein should transfer to the Columbia Straw Paper Company the properties on which he held options, I will offer in evidence.

(Objected to by counsel for complainants.)

Admitted subject to objection and marked "Defendants' Exhibit D," and is in words and figures as follows, to wit:

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DEFENDANTS' EXHIBIT D—AGREEMENT.

DEFENDANTS' EX. D—H. W. B., 1, 4, '96.

An agreement made this fifteenth day of December, in the year one thousand eight hundred and ninety-two, between Emanuel Stein, of the city of Chicago, county of Cook, and State of Illinois (hereinafter called the vendor), and Julia Stein, his wife, parties of the first part, and the Columbia Straw Paper Company, a corporation organized under the laws of the State of New Jersey (hereinafter called the company), party of the second part.

Whereas the vendor holds options upon mills, plants and factories for the manufacture of straw wrapping paper and upon the business in which such straw wrapping paper is manufactured, of which mills, plants and factories a schedule is hereto annexed, marked A, and is hereby made a part of this contract, and

Whereas the vendor is entitled under the terms of the said options held by him, to acquire the absolute title to all such mills, plants and factories, and in and to the several businesses named in such options upon the terms therein prescribed upon making the payments provided by such options; and

Whereas the company has a total authorized share capital of four million dollars (\$4,000,000), divided into ten thousand (10,000) shares of cumulative preferred stock of the par value of one hundred dollars (\$100) per share, and thirty thousand (30,000) shares of common or general stock of the par value of one hundred dollars (\$100) per share, and has authority to make an issue of bonds in the sum of one million dollars (\$1,000,000) secured by mortgage upon the present and after-acquired franchises, property and rights of the company; and

Whereas the vendor has presented to the board of directors of the company, a proposal in writing for the sale of the properties embraced in the options specified in the annexed schedule based upon the acquisition by him of such properties and his ability to convey the same to the company, and to assure unto the latter the good will of the businesses conducted at and upon the premises described in the several options of which a list is hereto attached; **and,**

Whereas the board of directors of the company has by resolution authorized the acceptance of the proposal made by the
490 vendor, conditioned upon the execution of a contract satisfactory in form to the officers to whom has been delegated the power to enter into such contract.

Now, therefore, in consideration of the foregoing recitals, and for other good and valuable consideration it is covenanted and agreed between the parties hereto, for themselves and their respective legal representatives and assigns, as follows:

First. That the vendor will acquire a good and indefeasible title in and to all the properties, mills, plants, factories and appurtenances described or referred to in the list hereto annexed, marked A, free from all claims, liens and encumbrances except such as may be expressly assumed by the company in the consummation of this agreement, and that the vendor will assure unto the company the good will of the respective businesses conducted upon said properties, by having the owners thereof from whom he shall acquire said property and businesses, enter into covenants in substantially the same form as the covenants contained in the options held by him as assignee from such owners, it being understood that the vendor holds all such options by assignment from Philo D. Beard and Thomas T. Ramsdell, the parties named in said options.

Second. The vendor hereby agrees to sell, and the company agrees to purchase all the real and personal properties, plants, mills and factories enumerated in Schedule A hereto annexed, together with the good will of all said businesses and all the rights and interests which the vendor is entitled to acquire and shall acquire under the aforesaid options.

The vendor shall pay the entire purchase price necessary to secure

such rights, properties and interests, and to assure unto the company the good will of said businesses to the extent to which he is entitled to acquire the same under the terms of said options, and there shall thereupon be paid by the company to him or his nominees for the said rights, properties and interests, and for the assurances of such good will, the sum of five million dollars (\$5,000,000) payable as follows:

a. One million dollars (\$1,000,000) thereof by the issuance and delivery to the vendor or his nominees of 1,000 six per cent. gold bonds of the company of the denomination of \$1,000 each, being all of a total authorized issue of one million dollars (\$1,000,000) of such bonds, secured by mortgage as a first lien or charge upon all the rights, properties and interests acquired by the company from the vendor and upon all after-acquired property of the company, 491 and upon its franchises and undertaking so far as such rights and interests are capable of being legally subjected to the lien of a mortgage.

The bonds secured by said mortgage shall be redeemable in gold coin of the United States of America of the standard weight and fineness, at a premium of ten per cent. by annual drawings, by means of an annual cumulative sinking fund of one hundred and ten thousand dollars (\$110,000.00), besides which the interest upon the bonds as redeemed shall be set aside, as though the said bonds were still outstanding, and the amounts thereof shall be added to and form part of the sinking fund, for the redemption of said bonds.

The trustees for the bondholders shall be designated by the counsel for the company, and in the event of the vendor being unable to convey the properties free from encumbrances, an amount of bonds equal at par to the encumbrances thus remaining on the properties shall be placed in the hands of the New York trustee for the bondholders together with an amount of preferred stock equal at par to twenty per cent. of the bonds so set apart and an amount of common stock equal at par to forty per cent. of the bonds so set apart, with directions to such trustee to dispose of said bonds and stock at public or private sale at the earliest possible date, but in any event within one year from the date hereof, for an amount of money not less than the encumbrances taken over by the company to the end that the property shall as soon as practicable be held by the company free and clear of all liens, claims and encumbrances and that the mortgage given to secure said bonds shall be a first lien or charge upon all the rights, properties and interests acquired by the company.

b. The further sum of one million dollars (\$1,000,000) of such purchase-money shall be paid by the due issuance and delivery by the company to the vendor or his nominees of the entire authorized issue of preferred stock of the company, to wit:

Certificates representing 10,000 shares of such stock of the total par value of one million dollars (\$1,000,000), all of which shall be full-paid and unassessable, and shall be so expressed on the face of the certificates.

The preferred stock so to be issued shall be cumulative, and shall

be entitled to cumulative annual dividends at the rate of eight per cent. per annum, payable quarter yearly before any dividend can or shall be declared or paid on the common or general stock; but the said preferred stock may at the option of the company be redeemed at par at any time after January 1st, 1903.

492 c. One thousand eight hundred dollars (\$1,800) in cash.

d. The balance of the purchase price of five million dollars shall be paid by the due issuance and delivery to the vendor or his nominees of twenty-nine thousand nine hundred and eighty-two shares of common or general stock of the par value of two million nine hundred and ninety-eight thousand two hundred dollars (\$2,998,200), all of which shall be full-paid and unassessable, and so expressed on the face of the certificates.

Third. If at the time fixed for the consummation of this agreement the vendor shall for any reason be unable to transfer and convey unto the company the title to all the properties enumerated in Schedule A hereto annexed, *and the vendor shall offer a binding contract for the sale to the company of the entire product of such of the mills as he may not be able to acquire at that time, accompanied by options to the company entitling it to acquire said mills*, the company may in any such event at its election either cancel, abrogate and annul this agreement, or if it shall determine to consummate the same there shall be set apart by the vendor in the hands of trustees satisfactory to the company an amount of bonds part of the above-specified issue equal at par to one-third of the price of such options, together with the amount of preferred stock, part of the above-stated issue, equal at par to one-third of the price of such options, plus twenty per cent., and an amount of common stock equal at par to two-thirds of the price of such options plus twenty per cent. of such common stock.

The company shall be under no obligations to perform this contract unless the options and contract be transferred to it by the vendor for the purchase of the product of the mills so excluded, and the option for the purchase of such mill shall be in a form satisfactory to its counsel, and in terms satisfactory to the company.

The vendor shall at the time of the consummation of the purchase hereby made pay into the treasury of the company the sum of two hundred thousand dollars (\$200,000.00) in cash to be used by the company as working capital, and he shall also pay all the costs, charges and expenses of organizing the company and incidental to the issue of the above-stated securities, which interest, charges and expenses are hereby agreed upon at the sum of fifty thousand dollars (\$50,000) in cash, and which payment shall also be made at the time of the consummation of the purchase by the company.

493 The said Julia Stein hereby joins in the execution of this agreement for the purpose of releasing any dower or right of dower in any property referred to in this agreement, and also any right of homestead that she may have in and to any said property described in the schedule referred to, and hereto annexed.

This contract and the covenants thereof shall bind the legal representatives of the vendor and the successors and assigns of the company.

In witness whereof the parties hereto of the first part have hereunto set their hands and seals, and the company have caused this instrument to be executed and its official seal to be hereto attached pursuant to resolution of its board of directors the day and year first above written.

COLUMBIA STRAW PAPER CO.,
By PHILLO D. BEARD, *Pres't.*
EMANUEL STEIN. [SEAL.]
JULIA STEIN. [SEAL.]

STATE OF ILLINOIS, }
County of Cook, } ss:

I, John D. Hood, a notary public in and for said county, in the State aforesaid, do hereby certify that Emanuel Stein, and Julia Stein, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this seventeenth day of December, A. D. 1892.

[SEAL.]

JOHN D. HOOD,
Notary Public.

SCHEDULE "A."

- | | |
|-----------------------------|----------------------------------|
| 1, 2 Church Paper Co..... | Rock Falls and Lyndon, Ill. |
| 3, 4 Graham & Co..... | Rockford and South Rock I., Ill. |
| 5 C. B. Robertson..... | Lafayette, Ind. |
| 6 Xenia Paper Company..... | Xenia, O. |
| 7 Vandalia Paper Co..... | Vandalia, Ill. |
| 8 Clarksville Paper Co..... | Clarksville, Mo. |
| 9 Cedar Falls Paper Co..... | Cedar Falls, Iowa. |

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|------------------------------|----------------------|
| 10 F. J. Diem & Co..... | Dayton, O. |
| 11 Merchants' Nat. Bank..... | Defiance, O. |
| 12 Lyons Paper Mill Co..... | Lyons, Iowa. |
| 13 E. L. Brown..... | Elmwood, Ill. |
| 14 J. F. Clark Paper Co..... | Marseilles, Ill. |
| 15 Ill. Valley Paper Co..... | Marseilles, Ill. |
| 16 F. I. Bard & Co..... | Knightstown, Ind. |
| 17 W. D. Bradt..... | Jackson, Mich. |
| 18 F. D. Sweetser..... | Ottawa, Ill. |
| 19 Robert Pilcher..... | Joliet, Ill. |
| 20 Massillon Paper Co..... | Massillon, O. |
| 21 H. E. Westervelt..... | Springfield, Ill. |
| 22 Whitewater Paper Co..... | Whitewater, Wis. |
| 23 Lincoln Paper Co..... | Lincoln, Neb. |
| 24 A. Heingartner & Co.... | New Philadelphia, O. |

25	Ft. Madison Paper Co.....	Ft. Madison, Iowa.
26	Richardson Paper Co.	Monroe, Mich.
27	Sandusky Paper Co.....	Sandusky, O.
28	Sterling Paper Co.....	Sterling, Ill.
29	Hastings Paper Co.....	Enon, O.
30	Lawrence Paper Co.....	Lawrence, Kas.
31	Chas. A. Clark.....	Logansport, Ind.
32	Joseph Spiro.....	Pontiac, Ill.
33	Chas. A. Miller.....	St. Charles, Ill.
34	May V. Bartlett.....	Yorkville, Ill.
35	S. W. Williams.....	Streator, Ill.
36	Newark Paper Co.....	Newark, O.
37	Coshocton Paper Co.....	Coshocton, O.
38	Rhoades, Utter & Co.....	Rockford, Ill.
39	Sangamon Paper Co.....	Springfield, Ill.

(Said Exhibit D is backed as follows:)

Emanuel Stein and wife, with Columbia Straw Paper Co. Agreement. Guggenheimer & Untermeyer, Dupee, Judah & Willard, attorneys, &c.

495 Mr. ALLEN: I propose with Mr. Gresham to arrange with him to have a copy made of the stock and bond registers, also of the record book of the company, for the production of which he has called for, through some representative of Mr. Gresham in New York, or otherwise, as you may agree, to obviate the necessity of taking depositions for the production of such books.

Counsel for the company in this proceeding are not able to produce at this time the books and records above referred to, as they are in either the possession of the receiver in New Jersey, or in the office of the company in New Jersey, or in possession of the secretary in New York.

Counsel for complainants does not assent to any arrangement which postpones the conclusion of the testimony.

Counsel for defendants offers in evidence certified copy of articles of incorporation of the Paper Commission Company, and certified copy of statement made by the Paper Commission Company to the secretary of state of New Jersey, giving the names of the directors and officers of the company on the 18th day of December, 1894.

(Objected to by counsel for complainants on the ground that they are wholly irrelevant in this case.)

Admitted subject to objection and marked respectively Defendants' Exhibits E and F, and are in words and figures as follows, to wit:

DEFENDANTS' EXHIBIT E—CERTIFICATE FOR INCORPORATION.

DEFENDANTS' EX. E.

Certificate for the incorporation of the Paper Commission Company.

This is to certify, that we, Wilson P. Marchbank, William C. Taylor and Theodore L. Herrmann, all citizens of the United States, do hereby associate ourselves into a corporation under and by virtue of the provisions of an act of the legislature of the State of New Jersey, entitled "An act concerning corporations," approved April 7th, 1875, and the several acts supplementary thereto and amendatory thereof, for the purposes hereinafter mentioned, and to that end we do, by this our certificate, set forth:

First. The name which we have assumed by which to designate such company, and to be used in its business and dealings
496 is, The Paper Commission Company.

Second. The place in this State where the business of the company is to be conducted, is the city of Hoboken, in the county of Hudson, where the principal part of the business of the company within this State is to be transacted; and the places out of this State where the business of the company is to be conducted, and where the company proposes to carry on operations are: in all the States and Territories of the United States and in foreign countries, wherever the product of the company can be most advantageously manufactured, purchased or sold, or wherever the company may desire to carry on any such business.

The portion of the business of the company which is to be conducted out of the State of New Jersey, will consist of the manufacture, purchase and sale of any and all the products of the company, and all such other business transactions as it may be authorized to conduct out of the State of New Jersey.

The principal office or place of business of the company out of the State of New Jersey, shall be located in the city of Buffalo, in the State of New York, but its principal office may be changed from time to time in accordance with the provisions contained in its by-laws with respect to such change, or if no provisions be therein contained, then the principal office of the company outside the State of New Jersey may from time to time be changed, as the directors of the company may determine.

Third. The objects for which the company is organized are as follows:

1. For the manufacture, purchase, sale and exchange of straw wrapping paper, rag wrapping paper, express paper of all grades and descriptions, manilla wrapping paper, whether made from wood pulp, jute or any other kind of hard stock, or from any combination of these or any other articles which may now be in use in the manufacture of paper, or may hereafter be desirable for use for any such purposes.

2. For the manufacture, purchase, sale and exchange of straw

and wood pulp boards, binder boards, building papers, roofing felts and papers, carpet felts and linings, straw-board lumber, wood pulp, straw pulp, or any other product which is now in use or may hereafter be desirable for use or in connection with the manufacture of any of the above-designated articles, or of articles of a like character.

497 3. For the manufacture, purchase, sale and exchange of each and every grade and character of paper that now is or may hereafter become the subject of manufacture, including news print, poster papers, book papers, writing papers, bond and ledger papers, blotting papers, paraffine papers, the intent hereof being, however, not to exclude by reason of the above enumeration, the right to the company to manufacture, buy, sell, deal in or exchange any character of paper whatsoever; the company hereby expressly reserving the right generally to manufacture, buy, sell, exchange or deal in any commodity of like character now known or that may hereafter become known.

4. For the manufacture of, dealing in or contracting for the sale, supply, letting or hire, erection, repair and maintenance and operation of any plant, implement or other thing incidental to or connected with any of the aforesaid objects.

5. To carry on as principals, agents, commission merchants, or consignees, the whole or any part or the businesses above specified, and to manufacture, purchase, sell, exchange, deal in and contract for all materials used in the manufacture of each, any and all of the above-specified articles, and to carry on as such principals, agents, commission merchants or consignees, any other business which may be conveniently conducted in conjunction with any of the above matters aforesaid.

6. To apply for, obtain, purchase, or otherwise acquire any patents, *brevets d'invention*, licenses and the like in respect of any inventions which may seem capable of being used for any of the purposes of the company above stated, and to use, exercise, develop, grant licenses in respect of and otherwise turn to account the same.

7. To purchase, take on lease or in exchange, hire, or otherwise acquire any real or personal property, rights or privileges suitable or convenient for any purposes of its business, and to erect and construct, make, improve or aid or subscribe towards the construction, making and improvement of mills, factories, storehouses, buildings, roads, docks, piers, wharves, machinery, reservoirs and works of all kinds, in so far as the same may be appurtenant to or useful for the conduct of the business of the company as herein specified.

8. To dam rivers and streams, including the storage, transportation and sale of water and water power and privileges, with the right to take rivulets, raceways and lands, and erect and maintain dams and raceways, and to lease, mortgage, sell and convey the same or any part thereof.

498 9. To cause or allow the legal title, estate and interest in any property acquired, established or carried on by the company to remain or be vested or registered in the name of or carried on by any other company or companies, foreign or domestic, formed or to be

formed, and either upon trust for, or as agents or nominees of the company or upon any other terms and conditions which the board of directors may consider for the benefit of the company, and to manage the affairs or take over and carry on the business of such company or companies, so formed or to be formed either by acquiring the shares, stocks or other securities thereof or otherwise howsoever, and to exercise all or any of the powers of holders of shares, stocks or securities thereof, and to receive and distribute as profits the dividends and interest on such shares, stocks or securities.

10. To acquire and carry on all or any part of the business or property of any company engaged in a business similar to that authorized to be conducted by this company, and to undertake in conjunction therewith any liabilities of any person, firm, association, or company, possessed of property suitable for any of the purposes of this company or for carrying on any business which this company is authorized to conduct, and as the consideration for the same, to pay cash, or to issue shares, stocks or obligations of this company.

11. To purchase, subscribe for or otherwise acquire, and to hold the shares, stocks or obligations of any company organized under the laws of this State or of any other State, or of any Territory of the United States or of any foreign country, except moneyed corporations, and to sell or exchange the same, or upon a distribution of the assets or division of profits, to distribute any such shares, stocks or obligations or the proceeds thereof amongst the stockholders of this company.

12. To borrow or raise money for any purpose of the company, to secure the same and interests or for any other purpose to mortgage or change the undertaking or all or any part of the property present or after acquired, subject to the limitations herein prescribed, and to create, issue, make, draw, accept, and negotiate debentures or debenture stock, bills of exchange, promissory notes or other obligations or negotiable instruments.

13. To guarantee the payment of interest or dividends on any shares, stocks, debentures or other securities issued by or any other contract or obligation of any corporation whenever proper or necessary for the business of the company, and provided the required authority be first obtained for that purpose.

499 14. To sell, let, develop, dispose of or otherwise deal with the franchise or undertaking or all or any part of the property of the company upon any terms, with power to accept as the consideration any shares, stocks, or other obligations of any other company.

15. To carry out all or any part of the foregoing objects as principals or agents or in conjunction with any other person, firm, association or company, and in any part of the world.

16. To do all such other things as are incidental or conducive to the attainment of the above object.

Fourth. The total amount of the capital stock of the company shall be thirty thousand dollars, divided into six hundred shares of common or general stock, of the par value of fifty dollars per share.

The company shall have power to create and issue certificates for preferred stock by the votes of a majority of its board of directors, without the previous approval of any meeting of the general stockholders.

The preferred stock may be made and issued subject to redemption at par at the option of the company at any time after the first day of January, 1903; and the first day of January, 1903, is hereby fixed as the time at which the company may, at its option, redeem such preferred stock at par. The preferred stock shall have no voting power.

Each holder of one share of the common or general stock shall be entitled to one vote for each share of the common or general stock of the company held by him or her, and the entire voting power of the company shall be vested in the holders of the common or general stock.

Fifth. The names and residences of the stockholders, and the number of shares held by each are as follows:

Wilson P. Marchbank, residing in the city of Newark, county of Essex, and State of New Jersey, seven shares.

William C. Taylor, residing in the city of Brooklyn, county of Kings, and State of New York, seven shares.

Theodore L. Hermann, residing in the city, county, and State of New York, six shares.

500 *Sixth.* The period at which the company shall commence is the fifth day of March, 1894, and the period at which it shall terminate is the fourth day of March, 1944.

Seventh. The company will commence business with five hundred and eighty (580) shares of common or general stock, of the par value of thirty thousand dollars, and with one thousand dollars (\$1,000) in cash, being the proceeds of the sale of the remaining twenty shares of the common or general stock of the company.

When the company shall have accumulated a surplus, in addition to its paid-up capital to the amount of one hundred thousand dollars, the annual net earnings shall thereafter be distributed amongst the stockholders, and after such surplus has been accumulated, set apart and maintained, dividends out of the net earnings shall be paid monthly so far as the same may be ascertainable. Upon the votes of the owners of twenty-five per cent. of the shares of stock at any time outstanding at any annual meeting of the stockholders, the company may be dissolved, provided that the owners of shares of stock in such aggregate amount, shall present to the board of directors at a regular monthly meeting held not less than thirty days prior to such annual meeting of stockholders, a written request signed by them demanding that a resolution to that effect shall be placed before the next ensuing annual meeting of stockholders; and provided, further, that each registered owner of the stock of the company shall receive thirty days' notice by mail of such intended action.

In witness whereof, we have hereunto set our hands and seals thi

fifth day of March, in the year one thousand eight hundred and ninety-four.

THEODORE L. HERRMANN.	[L. S.]
WILLIAM C. TAYLOR.	[L. S.]
WILSON P. MARCHBANK.	[L. S.]

501 STATE OF NEW YORK, }
 City and County of New York, } ss:

Be it remembered, that on this 6th day of March, in the year one thousand eight hundred and ninety-four, before me, Joseph G. Mathews, a notary public in and for the county of Kings, with certificate filed in the city and county of New York, personally appeared William P. Marchbank, William C. Taylor and Theodore L. Herrmann, who I am satisfied are the persons named in and who executed the foregoing certificate; and I, having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

Witness my hand and official seal the day and year first above written.

[SEAL.]

JOS. G. MATHEWS,
Notary Public, Kings Co.

Cert. filed in N. Y. Co.

Endorsed: "Received in the Hudson Co., N. J., clerk's office, M'ch 7th, A. D. 1894, and recorded in Clerk's Record No. —, on page —. Dennis McLaughlin, clerk. Filed Mar. 9, 1894. Henry C. Kelsey, secretary of state."

(Attached to the foregoing is the following certificate:)

STATE OF NEW YORK, }
City and County of New York, } ss:

I, Henry D. Purroy, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify, that Jos. G. Mathews has filed in the clerk's office of the county of New York, a certified copy of his appointment as notary public for the county of Kings, with his autograph signature, and was, at the time of taking the proof or acknowledgment of the annexed instrument, duly authorized to take the same; and further, that I am well acquainted with the handwriting of such notary, and verily believe the signature to the said certificate of proof or acknowledgment to be genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court and county, the 6th day of March, 1894.

[SEAL.]

HENRY D. PURROY, *Clerk.*

502 (On the back of the cover is the following:)

STATE OF NEW JERSEY,

(Coat of arms.)

DEPARTMENT OF STATE.

I, Henry C. Kelsey, secretary of state of the State of New Jersey, do hereby certify, that the foregoing is a true copy of the certificate of incorporation of the Paper Commission Company, and the endorsements thereon as the same is taken from and compared with the original filed in my office on the ninth day of March, A. D. 1894, and now remaining on file therein.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Trenton, this twenty-ninth day of April, A. D. 1895.

[SEAL.]

HENRY C. KELSEY,
Secretary of State.

(Said certificate endorsed on back as follows:)

Certified copy of certificate of incorporation of the Paper Commission Company.

503 DEFENDANTS' EXHIBIT F—STATEMENT.

DEFENDANTS' EX. F.

Statement by Corporation Transacting Business in the State of New Jersey.

As required by an act of the legislature of New Jersey, approved March 8, 1877, the Paper Commission Company, a corporation organized under the laws of the State of New Jersey, renders the following statement, to be filed in the department of state of the State of New Jersey:

The principal office of the company is at No. — Old Colony bldg., — street, Chicago, Ill.

The principal office of the company in New Jersey is at Judson place and River street, Hoboken, N. J.

The business of the company is that of selling straw paper.

At an election held at the organization meeting on the 27 day of March, 1894, the following-named persons were chosen directors, as noted:

The seven directors then chosen having since resigned at various times, and others elected, the present board is named below:

Name.	P. O. address.	Term.	Expiration of term.
Philo D. Beard.....	Chicago, Ill .....	....	1st Tuesday, June, '95.
Emanuel Stein.....	" " .....	....	"
Chas. A. Chapin.....	Niles, Mich .....	....	"
Anthony B. Trentman	Ft. Wayne, Ind.....	....	"
James A. Hill.....	Chicago, Ill.....	....	"
Peter Henkel.....	" .....	....	"
Edgar A. Jacks.....	Niles, Mich .....	....	"
Wilson P. Marchbank	Newark, N. J.....	....	"
Richard T. Higgins	Vandalia, Ill.....	....	"

The officers of the company are: President, Philo D. Beard; secretary, Emanuel Stein; vice-president, Chas. A. Chapin; treasurer, Emanuel Stein.

Dated Dec. 18, 1894.

The foregoing statement is correct and true.

PHILO D. BEARD, *President*.

Attest: EMANUEL STEIN, *Secretary*.

504 (Attached to the foregoing is the following certificate:)

STATE OF NEW JERSEY,

(Coat of arms.)

DEPARTMENT OF STATE.

I, Henry C. Kelsey, secretary of state of the State of New Jersey, do hereby certify that the foregoing is a true copy of report of officers, directors, &c., of the Paper Commission Company for the year 1894, as the same is taken from and compared with the original filed in my office on the twenty-sixth day of Dec. A. D. 1894, and now remaining on file therein.

In testimony whereof, I have hereunto set my hand and [SEAL.] affixed my official seal, at Trenton, this twenty-ninth day of April, A. D. 1895.

HENRY C. KELSEY,
Secretary of State.

(The foregoing is backed as follows:)

Report for 1894 of the Paper Commission Company of the State of N. J. Officers, directors, &c. Filed Dec. 26, 1894. Henry C. Kelsey, secretary of state.

505

Testimony of J. B. Sherwood.

By Mr. GRESHAM:

Q. Mr. Sherwood, who is the Philo D. Beard mentioned in the statement of the Paper Commission Company to the secretary of State of New Jersey?

(Objected to by counsel for complainants on the ground that it is wholly irrelevant in this case.)

A. He is president of the Columbia Straw Paper Company.

Q. The same Philo D. Beard that has been spoken of in connection with the Columbia Straw Paper Company?

A. Yes, sir.

Q. And who is the Emanuel Stein mentioned in the statement furnished by the Paper Commission Company to the secretary of state of New Jersey?

(Objected to by counsel for complainants as irrelevant to this case.)

A. He is the treasurer of the Columbia Straw Paper Company and the same gentleman who testified here the other day.

Q. Who is Charles A. Chapin, mentioned in the statement furnished by the Paper Commission Company to the secretary of state of New Jersey?

A. Mr. Chapin is the president of the Niles Paper Company, Niles, Michigan, a large paper mill.

Q. Was the Niles paper mill one of the plants which it was understood by you and the defendants in this suit would be taken into the Columbia Straw Paper Company?

A. Yes, sir.

Q. Was an option obtained on the Niles paper mill?

A. No, sir, there was a running arrangement to be made between Mr. Jacks, the treasurer, and the Columbia Straw Paper Company.

Q. Who was Anthony B. Trentman?

A. He is a resident of Fort Wayne, and president and general manager of the Hartford City paper mill on which an option was taken. It was not taken into the company.

Q. Was that one of the seventy-three mills enumerated to Mr. Stein?

A. Yes, sir.

Q. Who is James A. Hill and Peter Henkle?

A. James A. Hill and Peter Henkle are stockholders in the Wabash paper mill at Wabash, Indiana, which was originally owned by the Diamond Match Company and operated for the purpose of making straw board for their match boxes. They afterwards sold the mill to these gentlemen. That mill was not
506 one of the mills. I will say that the Wabash mill was owned by the Diamond Match Company in 1892.

Q. Who was Edgar A. Jacks?

A. Resident of Niles, Michigan, and connected with the Niles Paper Company.

Q. Who was Wilson P. Marchback?

A. I do not know him, he is a resident of New Jersey according to that statement, and I presume he is a resident director, but that I do not know.

Q. Who is Richard P. Higgins?

A. The same Richard P. Higgins that is spoken of in this testimony, and one of the directors of the Columbia Straw Paper Company, and I believe, at the time of the commencement of the foreclosure of this mortgage, general manager of the company.

Q. What relation did the mill at Niles, Michigan, and the mill at Hartford City, Indiana, of which Mr. Trenton was president, and the Wabash, Indiana, mill, bear in the market with relation to the Columbia Straw Paper Company?

A. They were active competitors.

Q. How many mills and what class of mills were brought into relations with the Columbia Straw Paper Company by means of this Paper Commission Company, if you know?

A. I really cannot answer that question, except as that paper shows, and from information I have received outside.

Q. Were any other mills than the mills at Wabash, Hartford City, Indiana, and Niles, Michigan, brought into the alliance with the Columbia Straw Paper Company by means of this Paper Commission Company?

A. Yes, sir, I remember one mill, that is the Paragon mill of Eaton, Indiana.

Q. What class of mills were brought into the combination and relation of the Columbia Straw Paper Company by means of this Paper Commission Company?

A. The very best class of mills, making a large tonnage of paper.

Q. By that I mean, were they competitive or non-competitive?

A. They were all competitors.

Q. Then by means of the Paper Commission Company, the Columbia Straw Paper Company, through its control of the majority of the stock of the Paper Commission Company, was able to control the market as absolutely as if it had taken in the seventy-three original mills?

A. Yes, sir, that was the purpose of it.

507 Q. I will ask you if it was not the purpose of the Paper Commission Company to supply the defect which had been caused by not taking into the organization the seventy odd mills which it was understood by some of the parties at least, would be taken into the Columbia Straw Paper Company.

(Objected to by counsel for complainants as wholly irrelevant.)

A. Yes, sir.

Q. Now I would like you to state where these seventy mills were located, by States, and the names of the mills.

(Objected to by counsel for complainants as irrelevant.)

A. In West Virginia there were. 2 mills.
One at Wheeling and one at Wellsburg.

In Ohio there were. 15 mills.

At Sandusky, Dayton, Defiance, Delphos, Coshocton, Newark, New Philadelphia, Enon, two at Lockland, two at Maumee, Massillon, Xenia, and there is one other I do not remember just at present.

I believe there were in Michigan. 11 mills.

One at Niles, Allegan, Jackson, Tecumseh, two at Monroe, one at Rochester, Shiawassee, Palmyra, Rockford and Dundee.

In Indiana, I believe, there were. 7 mills.

They were at Mishawaka, Hartford City, Logansport, Lafayette, Knightstown, Evansville and Madison.

In Wisconsin there were. 1 mill,

At Whitewater, and there was another mill at Sparta, Wisconsin, but as that was engaged in manilla, and made very little straw wrapping, that was not counted at all. It would occasionally go on straw paper, but was a manilla mill.

In Minnesota, at Minneapolis..... 1 mill.
 In Illinois..... 21 mills.

Two at Rockton, two at Marseilles, two at Rockford, one each at Vandalia, Springfield, Riverton, Streator, Pontiac, Dayton, Moline, Lyndon, Rock Falls, Sterling, St. Charles, Elmwood, Yorkville, and two at Joliet. There is one building at Chillicothe and there are two others I will remember in a few moments.

In Kansas, at Lawrence..... 1 mill.
 In Missouri, at Clarksville..... 1 mill.

In Iowa..... 6 mills.

—Lyons, Clinton, Dubuque, Cedar Falls, Fort Madison and Council Bluffs.

508 In Nebraska, at Lincoln..... 1 mill.

There were three mills building, one at Chillicothe, Illinois, and one at Kearney, Nebraska, and one at Beatrice, Nebraska.

Q. Mr. Sherwood, were these mills that were not taken into the combination by the medium of the Paper Commission Company competitive mills in the market?

MR. DUPEE: Objected to for the same reasons already stated on behalf of complainants, and for the additional reason that this subject has been gone over, and it was understood by some of the parties at least they would go into the Columbia Straw Paper Company.

A. They became competitive mills just as soon as the price of paper was put up; so long as it remained at low figures they weren't able to compete; just as soon as the price of paper was put up by the Columbia Straw Paper Company, as it was, to thirty dollars a ton, it brought them all into market as competitors.

Q. But I am talking of the time of the Paper Commission Company.

A. Yes, sir; they were all competitive mills; some of them would run part of the time and shut down part of the time.

Q. But the mills, I ask you, that were not taken into the combination by the medium of the Paper Commission Company, were they active competitive mills?

(Objected to by counsel for complainants on the same grounds as last stated.)

A. Not unless the price of paper was put up.

Q. Mr. Sherwood, that Paper Commission Company was organized and took in the competitive mills, did it, to put up the price of paper to thirty dollars per ton?

A. That was done by the Columbia Straw Paper Company when it first started.

Q. I am not asking you about the Columbia Straw Paper Company, but simply about the Paper Commission Company.

A. No, sir; it did not.

Q. Did the non-competitive mills which were not taken into the combination through the Paper Commission Company start up after the Paper Commission Company took control of the product

of the Columbia Straw Paper Company and the mills which were in competition with it in the market at the time of its organization?

A. No, sir.

By Mr. ALLEN :

Q. Mr. Sherwood, will you please state the amount of stock of the Columbia Straw Paper Company of both kinds, common and preferred, now owned by the cross-complainants in the cross-bill filed in this case, the aggregate amount of each owned by all, omitting the Buckstaff Brothers, who have withdrawn from the suit?

A. Will you allow me to refer to a memorandum to refresh my memory?

Q. Yes, certainly, add it up and answer.

A. In the aggregate, leaving out Mr. Buckstaff, they owned (1,038) ten hundred and thirty-eight shares of preferred and sixteen hundred and forty-seven shares (1,647) of common stock of the Columbia Straw Paper Company.

Q. How much of bonds in the aggregate did the cross-complainants own?

A. Mr. Carroll owns ten bonds.

Q. Of one thousand dollars each?

A. Of one thousand dollars each; Mr. Hooker, as executor for an estate, owns four.

Q. Bonds of one thousand dollars each?

A. Yes, and Mr. Dickerman, as trustee, of the Second National Bank of Rockford, has twelve bonds.

Q. Of one thousand dollars each?

A. Of one thousand dollars each.

Testimony of H. M. Wolf.

HENRY M. WOLF, called as a witness on behalf of certain defendants, being first duly sworn, was examined in chief by Mr. Gresham, and testified as follows :

Q. Please state your full name?

A. Henry M. Wolf.

Q. Where do you reside?

A. Chicago.

Q. How long have you lived in Chicago, Illinois?

A. Thirty-two years.

Q. Are you a native of Chicago, Illinois?

A. I am not.

Q. Where were you born?

A. Rock Island, Illinois.

Q. How long have you been a member of the firm of Dupee, Judah, Willard & Wolf?

A. In 1886 I was given an interest in a certain part of the business of Dupee, Judah & Willard; in 1890 I obtained an interest in

all the business of the firm, since that time I have been a member of the firm of Dupee, Judah & Willard, so called, and in May of this year the firm name was changed to Dupee, Judah, Willard & Wolf.

Q. Are you acquainted with the firm of Guggenheimer & Untermeyer, of New York city?

A. I am.

Q. With individual members of that firm?

A. I am.

Q. How long have you known these gentlemen?

A. Some of them—well, I have had business relations with the firm, or my firm has, as correspondents since April, 1889. I became acquainted with one of the members of the firm some time after that, and since then I have become acquainted with them all personally.

Q. And their office force also?

A. No, I may know some of the members in their office, but they have a course of probably twenty or thirty clerks and I do not know them all, I may know one of them or two, maybe more.

Q. Do you know Mr. Marshall, a member of the firm of Guggenheimer, Untermeyer and Marshall, it is now?

A. I do.

Q. How long has Mr. Marshall been a member of the firm, if you know?

A. My impression is, although I am not absolutely certain, that he was taken into the firm in February of 1894.

Q. When did you first become counsel in connection with the organization of the Columbia Straw Paper Company?

A. I never had heard of the Columbia Straw Paper Company or anything connected with it prior to the 15th or 16th or 17th day of June, 1892, or any person excepting our New York correspondents whose names have been mentioned in these papers, the various pleadings and testimony here.

Q. When did you first meet Mr. Beard?

A. Mr. Beard came into my office on either the fifteenth, sixteenth or seventeenth day of June, 1892, with a letter of introduction from Mr. Samuel Untermeyer. I never had seen him before that time.

Q. Did he come in connection with the business of the proposed scheme of organizing a corporation such as the Columbia Straw Paper Company?

A. No, sir, he came with a letter of introduction which he presented to me.

Q. I mean, was there any conference with reference to the possible organization?

511 A. I have the letter which that — for which he came to see about. I shall read it if you care to have me read it to you?

Q. I do not care for that. I will ask you whether his business was with reference to any step looking to the organization of the company, the Columbia Straw Paper Company?

A. (After producing letter.) I might answer your question more fully if I read this letter.

Q. You may answer it with whatever fullness you desire.

A. This letter is as follows :

Guggenheimer & Untermeyer, attorneys and solicitors at law, Bank of America building, No. 46 Wall street, corner of William street; uptown office, 906 and 908 Third Ave.

NEW YORK, *June 13, 1892.*

Henry M. Wolf, Esq., care of Dupee, Judah and Willard, Adams Express building, Dearborn street, Chicago, Ills.

MY DEAR MR. WOLF: This will introduce to you Mr. Philo D. Beard of Buffalo, who is about organizing a consolidation of the manufacturers of straw paper in the West, whom I commend to your favorable consideration. I have prepared certain options for Mr. Beard to be signed by the various manufacturers, and these options provide for a deposit of documents and securities by the various manufacturers. I have advised Mr. Beard to make the trust company in Chicago represented by your firm the depository of these papers, but I do not recollect at the moment the name of the company. Will you kindly confer with Mr. Beard on the subject and give him such assistance as is in your power.

With kind regards, believe me—

Very truly yours,

SAMUEL UNTERMYER.

Mr. Beard introduced a gentleman who was with him, as Mr. Ramsdell. He asked me one question, namely, the question referred to in the letter, the name of the trust company to be nominated for the papers which are referred to there but which I had not seen, as the depository. I answered, the Northern Trust Company; he said that he was acquainted with Mr. Smith and had done business 512 with him, and that that was very satisfactory. I also told him that if it was not, and that if he desired a second, he might name the Chicago Title & Trust Company. I was on the point of going to court at that time and I think our whole interview was limited to possibly five minutes, and may not have extended that length of time. I never saw Mr. Ramsdell after that morning, to my knowledge. My present recollection is I did not see Mr. Beard until in the early winter. I think it was around the 10th of December that I—it might have been after that that I saw Mr. Beard; it is possible I may have seen him in New York, as I happened to be there during the fall, but I have no recollection of any interview with Mr. Beard between June and December.

MR. GRESHAM: A good deal of this is not responsive, but it is not altogether incompetent; I do not move it be stricken out.

Q. What do you know about options being taken during the summer of 1892, on the plan outlined by Mr. Untermeyer in his letter to you?

(Counsel for complainants suggest that the witness state only what he knows of his own knowledge.)

A. Of my own knowledge, nothing; I may have been consulted about some of the language of the options, and I may have filled out one form, but so far as taking options were concerned I knew absolutely nothing of my own knowledge, for I never had anything to do with it. I was simply acting as a legal adviser; when questions arose I was consulted as a lawyer.

Q. Did you know they were taking options during the summer, from the fact that they consulted you about it?

A. They simply consulted me about modifications of contracts. Why I was consulted, what the subject-matter was, I can say generally that I knew nothing.

Q. Did you know generally that they were taking options?

A. No, I knew very little about it. I was not home but a short time after June, and—

Q. When did you come back?

A. I went away to Maine in the early part of August and remained away after finishing my business there on my vacation; I was up in the mountains in New York.

Q. Until when?

A. Until practically the 18th of September, and I stopped on my way at Detroit on other business, and I do not think I had anything to do with—

Q. You state that you were here during June and July?

A. Yes, but Mr. Stein was not here during July, or at least the greater part of it.

513 Q. Who was Mr. Stein?

A. Mr. Stein is the gentleman who came to me with a card from Mr. Beard.

Q. After Mr. Beard called on you?

A. Yes, sir.

Q. When did Mr. Stein come to you, if you can recall generally?

A. Well, I have got exact details I can give you, if you wish. (Producing paper.)

Q. I will ask you to do so.

A. Some time between the 16th and 20th day of June, 1892.

Q. How often did you see him between the 16th or 18th of June and the 1st of August say, about?

A. Oh, I have no accurate recollection of that. I know that Mr. Stein went away some time in July and that he returned when I was not here, so I am certain it could not have been but a very few times.

Q. The number of times?

A. Several times.

Q. Half a dozen times, something like that?

A. It may have been something like that. I want to say that when Mr. Stein first called I was not in, I was in court.

Mr. GRESHAM: If you have got anything to read, please let me look at it.

The WITNESS: Certainly. (Handing card.)

Q. (Handing card back to witness.) That you can put in if you desire.

A. About the dates I have already mentioned I found on my private desk the card, "Mr. E. Stein, 619 Pullman bldg.;" attached to it was a card on one side of which were the words, "Mr. Philo D. Beard, Buffalo, New York." On the other side were written in pencil, "Mr. Wolf, this will introduce Mr. Stein, who comes for Mr. Ramsdell and myself in the straw-paper matter. Very truly, P. D. Beard." Subsequently Mr. Stein called when I was in; my recollection is that he simply came to introduce himself in pursuance of the card which he had left.

Q. After you returned, now, from your summer vacation about the 18th of September, when did you first see Mr. Stein?

A. My recollection is that when I got back Mr. Stein was in New York and as nearly as I can recall now I did not see Mr. Stein until about the 20th of October, 1892.

Q. What, if anything, then did you learn with reference to the taking of options?

A. Nothing.

514 Q. When did you learn that the taking of the options had been completed?

A. At the time I learned that the options were being accepted.

Q. Being accepted by whom?

A. By Mr. Stein.

Q. They had been taken in the name of Messrs. Beard and Ramsdell?

A. Yes, sir.

Q. The acceptances you refer to were acceptances from Beard and Ramsdell by Stein?

A. No, the acceptance by Stein as the assignee of Ramsdell, and the acceptances by Beard in his own interest, I think, at that time. That had all been determined before I saw Mr. Stein, I had nothing whatever to do with it.

Q. Who drew the articles of agreement, accepting on behalf of Stein and Beard, accepting the options?

A. I do not know it was not drawn in Chicago, at least not in our office.

Q. Did you ever see it, the agreement accepting options?

A. There was no agreement accepting, it was simply a notice of acceptance.

Q. Signed by these parties to the bill-owners?

A. Yes, sir, accepting the options in accordance with the terms and calling for the possession of the documents?

Q. Who drew that?

A. My previous answer refers to that. There was no agreement to my knowledge, under the options the time limited for acceptance was the 31st day of December, 1892, and as I recall it, the options provided for a deposit of papers with the Northern Trust Company, abstracts, deeds and bills of sale, and the acceptance by Mr. Stein, called for a deposit of these papers. There were copies of these ac-

ceptances that were made out in Mr. Stein's office, I presume, but the original paper was not drawn up in Chicago.

Q. Where were the options at that time?

A. I do not know.

Q. Did you ever see the options?

A. I did.

Q. Were they ever placed in your custody or care?

A. They were.

Q. When?

A. I cannot give you the exact date.

Q. I don't mean that of course, but about when?

515 A. Oh, some time in November or December, 1892, my best recollection is now.

A. How long did you keep them?

A. Why I still have them.

Q. You still have them?

A. I think so.

Mr. GRESHAM: Well, I ask that the witness be required to produce the options here.

Mr. DUPEE: I suggest that the gentleman better throw grass before he throws stones. The witness has not been asked if he is willing to produce them.

Mr. GRESHAM: I will be glad to dispose of that. Of course that request is addressed as much to Mr. Wolf as it is to the master, if he is willing to produce them.

Mr. DUPEE: You do not ask a question of the witness by making a motion.

Mr. GRESHAM: I will ask the witness to produce these papers.

The WITNESS: I have no objections to producing all the options that were placed in my hands, none at all.

Mr. GRESHAM: And all that you have?

The WITNESS: All that I still have.

Q. Did you not have all the options?

A. I do not know that.

Q. The options will show for themselves.

A. I do not know what I have and what I have not; I simply know that when the time came to make payments, the options were turned over to me in order to see that the terms were complied with, and these options when we were through were put back in the box and stored away in the vault; and I take it that they are still there.

Q. Now I will ask you, at any time it will be convenient to produce these options, we would like to have you do so here before the master.

A. I have no objection to doing so.

Q. Will you fix a time when it will be convenient to you and agreeable to us?

A. Do you wish me to fix that time now?

Q. No, you can do it now or notify us.

A. I will notify you.

Mr. DUPEE: I hope that the witness will find it convenient to produce them at an early day.

The WITNESS: I shall try to have it done during the day. I hope you will remember that everything I am doing now is subject to call home.

516 Mr. GRESHAM: That I understand and that is the reason I put it in that shape.

The WITNESS: I shall be prepared to produce them as soon as I can have them hunted up, that is understood, they have been stored away like old lumber in the vault and no one has ever called for them until you have this morning.

Q. Now Mr. Wolf, the amounts which these options call for as payments to the mill-owners, when were these amounts paid, if you recollect in a general way?

A. When were the mill-owners paid?

Q. Yes.

A. Subsequent to the—oh, around the latter part of January, 1893, and thereafter.

Q. The options then, were extended, the time for the payment I should say, was extended by the mill-owners?

A. My recollection is that the terms of the options were carried out as accepted, I do not believe that the options—the time limited for acceptance was limited to December.

Q. Oh, I thought you said the time for—

A. No, the time for acceptance was limited to December, and the options I think, the general form provides that thirty or sixty days should be allowed for the subsequent payments.

Q. Now the payments on the options were made through you I understood you to say a while ago?

A. No, I did not say that, at least I did not mean to say that; I said the options were deposited with me so I could see that in closing up the various deals all the terms of the options were complied with; to explain, the options had a list, and Exhibit A, as it was called in the contract, in which long lists of personal property were given which passed with the property in various instances. In some instances there were exceptions; when the mill-owners were settling up they produced bills of sale and made applications for extra allowances. In some cases these extra allowances ran as high as fifteen or twenty thousand dollars, and there were questions which were determined purely by the wording of the options as originally drawn, and these questions had to be determined by agreement between the mill-owners and their counsel, and the company and its counsel; and for that purpose principally the options were turned over—were handed to me.

Q. Where were the payments made to the mill-owners?

A. You mean where were the parties at the time the payments were made?

Q. Yes.

A. Why, some of the mill-owners were paid at the places where

they lived outside of Chicago and some of them were paid in Chicago; some at the various banks around the city where they had sent drafts, and others were paid probably at the office of the company, and still others were paid in my office.

Q. Now, how was the fund raised which went to pay these mill-owners?

A. How was the money raised?

Q. Yes.

A. I cannot answer that, I do not know, I do in certain instances, but in some of them I do not.

Q. Were you authorized to draw on any funds in settling with any of the mills, did you draw on any fund?

A. There was deposited in the Northern Trust Company by Mr. Samuel Untermyer, or to his credit, a largesum of money, the exact amount I cannot state, but in the neighborhood of—well, to exceed eight hundred thousand dollars, and this money was all checked to Mr. Emanuel Stein in such amounts as he indicated and these checks were all endorsed over to the parties entitled to receive the money.

Q. By whom was the money checked to Mr. Emanuel Stein?

A. Mr. Untermyer, as a matter of convenience, said he would like me to act as his attorney-in-fact in making these checks to Mr. Stein, and I was given a power of attorney to sign checks only. I had no other authority than that and I signed all of the checks I think, that went to Mr. Stein.

Q. Do you know when this sum of eight hundred thousand dollars and over was deposited in the Northern Trust Company, about?

A. I think that account was opened some time in January of 1893; my recollection is between the 24th and 28th day of January the account was opened; the money was not all deposited in that account at that time, but what I have stated is the lump sum, possibly more than that. I do not know just what the figures were, I have not had time to look them up.

Q. And that fund was used in paying the mill-owners the cash payments which the options called for?

A. All of the deeds ran to Mr. Stein, from every mill-owner and then Mr. Stein conveyed to the company; it was Mr. Stein's request that the company should see to the application of this purchase-money in the way that I have stated, and all the payments both to the mill-owners and to the Columbia Straw Paper Company were made in that manner.

Q. Do you know how much it took to pay the mill-owners?

Mr. DUPEE: You mean in cash?

Mr. GRESHAM: I mean in cash.

A. My recollection is it was in the neighborhood of eight hundred thousand dollars, just what the figures are I have not in mind.

Mr. DUPEE: You mean cash?

The WITNESS: Yes, sir, cash or its equivalent, a good many of the mill-owners took bonds in place of cash, like Mr. Carroll, for instance, he concluded to subscribe for some bonds.

Q. You had then, all the options at one time in your possession?

A. I say I have all that were handed to me. I do not know whether there were others that I did not have, but I had a great many options and all the mills that are included in the mortgage, I think I have the options of it over two years, or almost two years now since I have had occasion to prefer to these matters, so I am absolutely certain that I had them all.

Q. Well it would be natural for you to have them all because they were given to you as a check to see that the proper amount and no more were paid to the various mill-owners?

A. Well you can judge of that as well as I can; I was acting under instructions and simply did what I was told to do.

Q. Well that was for the purpose of transferring all the mills and the transaction was to be completed here in Chicago and was completed here in Chicago?

A. Not all I think, no, a good many of them were not; one for instance, in which Mr. Sherwood took part, was completed at Logansport, Indiana.

Q. But it was completed through Chicago and you at the time, was it not? Did Mr. Sherwood in that instance act under your instructions?

A. No, sir, Mr. Sherwood did not act under my instructions.

Q. Didn't you give him a draft to enable him to pay at Logansport?

A. No, sir, he acted as attorney for Charles A. Clark.

Q. Who is Charles A. Clark?

A. Charles A. Clark is the owner of the Logansport mill.

Q. But did not you give him the check or draft which enabled Mr. Stein to make the cash payment or whoever made the cash payment in that case according to the option?

A. No, I did not give it, Mr. Untermeyer did not give it, I never gave any; my recollection is in that case, that Mr. Clark was very much involved and his liabilities were far in excess of the money that was coming to him and Mr. Sherwood personally by conference with Mr. Beard, Mr. Stein and others, and I think Mr. Clark also induced some of the officers of the Columbia Straw Paper Company to advance money in excess of the amount that was coming
519 to him in order that they might make that purchase; I may be in error about that, but I think that is the fact, and that money never passed through my hands.

Q. In any shape whatever?

A. That is, this particular fund I never had anything to do with; that is my recollection.

Q. How was the stock usually distributed to the mill-owners?

A. Under the agreement of December 15, 1892, between Emanuel Stein and Julia Stein and the Columbia Straw Paper Company, which is in evidence as Exhibit D, Mr. Stein was to receive, among other things, one million dollars of preferred stock, and two million nine hundred and ninety-eight thousand two hundred dollars (\$2,998,200) of common stock, full paid and non-assessable, and Mr. Stein gave orders on the Columbia Straw Paper Company to issue

stock in satisfaction of the amounts mentioned in the several options to the parties entitled to receive it, and the balance of the stock was issued to Mr. Stein after these payments were made.

Q. Then these orders would show, if in existence, the exact amounts of stock which were to be issued to these various parties?

A. Yes, sir.

Q. Do you know whether these orders were ever preserved by the Columbia Straw Paper Company?

A. I think they are.

Q. Would they be attached to the stub of the stock certificates?

A. I do not think so.

Q. Did you ever see these orders?

A. I did.

Q. Where?

A. Oh, I saw a good many of them in my office.

Q. Where was the stock issued from at that time; from your office, wasn't it?

A. I think the greater part of it was; a great deal of it was; the Columbia Straw Paper Company sent two of its men over to my office to do the work, and subsequently it made an arrangement with Mr. Hood, of my office, to do the work on a salary, and Mr. Hood did it under the directions of the officers of the Columbia Straw Paper Company. Whatever was done in that respect was done by the clerks of the Columbia Straw Paper Company.

Q. But in your office and under your general supervision?

A. Oh, I should say that that is probably correct, generally; I did not see the various papers.

Q. For the reason that you had been requested by Mr. Untermeyer to see to the application of this fund?

A. Not by Mr. Untermeyer; I had been asked all around to do it.

520 Q. What do you mean by "all around"?

A. Mr. Stein was obligated to make these payments; the company was obligated to make these to Mr. Stein; there were probably one hundred people, probably two hundred, in course of settling up the various matters, who had to come in and be adjusted with; there was danger of making mistakes and errors; the Columbia Straw Paper Company had taken its offices in the Chamber of Commerce, and its offices were too small, and it could not get adjoining room, and they were engaged in taking over all these mills at practically the same time, and their force was very busy day and night, and they asked—Mr. Beard asked me, and Mr. Stein asked me—if I would not consent that Mr. Hood do the work, instead of having it done over there where they were so very busy. That is the way it came to be done in my office; it was not done in my particular room; it was done by Mr. Hood out of office hours, as a rule, as a separate matter.

Q. What do you know about how and where Mr. Untermeyer got the eight hundred and odd thousand dollars which were placed to his credit in the Northern Trust Company?

A. I have already said that as to some of it I knew, and as to the balance I knew nothing.

Q. You may state as to what you know.

A. Why, some of that money was deposited by Mr. Untermeyer personally, just what the sum was I do not recall at this time, but it was several hundred thousand dollars; for whom he deposited it I do not know; some of the money was deposited by Mr. Beard, some of the money was deposited by Mr. Stein and other parties like Mr. Brown, of Elmwood, Mr. Trebein, of Xenia, Ohio, Hollis and Duncan and others went to the Northern Trust Company, went and deposited their money and got their certificates, temporary bond certificates, and subsequently bonds were issued on those certificates; some of the money had come into my hands. I bought some bonds of Mr. Stein and gave my check.

Q. To Mr. Stein?

A. This money immediately went to Mr. Stein, yes.

Q. When was it you bought some of the bonds?

A. I think I paid for some of the bonds, I am not clear, but it was March, April or May, 1893, that I paid for some of the bonds.

Q. Well, did you buy them of the syndicate or buy them of Mr. Stein individually?

A. I do not know of any syndicate, I bought my bonds of Mr. Stein.

521 Q. But the money did not go into this fund in the Northern Trust Company?

A. Yes, I said it went to Mr. Stein, but just how the check was drawn, or its amount, I do not recall; I do not recall whether I gave my check for it, but I know a check was given for it.

Q. Well, you know that you did not give, that the five thousand dollars, wherever it was put up, was not paid into the fund deposited in the Northern Trust Company, to the credit of Mr. Untermeyer was it?

A. I have said that every check that was deposited to Mr. Untermeyer went to Mr. Stein, every dollar that was deposited to Mr. Untermeyer's credit was checked out to Mr. Stein.

Q. By whom, by you?

A. By me as attorney-in-fact for Mr. Untermeyer.

Mr. DUPEE: You mean to him by parties named by you.

The WITNESS: No; to him, every check bears on its face the name of Emanuel Stein, and he endorsed it to whomsoever he pleased.

Q. Have you those checks?

A. Yes.

Mr. GRESHAM: I will ask you to bring those checks here at the same time you bring the options.

Q. Do you know, Mr. Wolf, whether Mr. Stein, according to this contract between him and the Columbia Straw Paper Company placed two hundred thousand dollars in the treasury of the Columbia Straw Paper Company?

A. My recollection is that he placed practically that sum, yes; it

may have run a few dollars over or it may have run a few dollars under, I do not know just exactly what it is, but I think he complied with his various contracts with the company.

Q. Now all the stock that Mr. Stein did not get of that issue, I mean that the mill-owners did not get of the issue of four millions, Mr. Stein got, did he not?

A. The books will show that I am not absolutely clear, but that is what the contract provides.

Q. And all that stock was issued to him here in Chicago in your office?

A. No, I have said, I have explained how it was done, I do not think it was done through my office.

Q. Well the stock issued to the mill-owners on Mr. Stein's order was issued through your office?

A. As I stated to you, I have already explained that the Columbia Straw Paper Company at the time the settlements were made, sent two and possibly three of its employes, clerks, to our office where the mill-owners were coming in at the appointed time to close up, and they did the work there, acting under and in accordance with the written directions of Mr. Stein and the company. It was not done in our office, excepting that they happened to have a desk there possibly at the time, it was done there, but they were not clerks of our office, not in our employ, and so far as I recall I had nothing to do with it; I know I had too many, many things to look after and do not believe I had anything to do with that.

Q. The money went out under your check?

A. I signed the checks, but you were asking about the stock; the check book was kept in my private vault.

Q. Where was the stock book kept?

A. I do not remember.

Q. Were the certificates signed by the president and secretary in blank?

A. I do not think so.

Q. Who was the president at that time?

A. —they may have been, some may have been, I do not think any of them were though, signed with both names in blank; I think possibly if Mr. Beard was about to leave the city as he used to for a few days, that he would sign them, but whether that was so or not I do not know because, as I have explained, Mr. Hood was doing that work for them at the time.

Q. Who was the treasurer of the company at that time?

A. Mr. Heppenheimer was at the beginning and then Mr. Stein succeeded him.

Q. And he was the treasurer during the distribution of the securities and distribution of this fund, was he not?

A. I do not recall.

Q. I ask that because I recollect seeing his name on certain orders which—

A. I do not recollect whether he was at that time, I know he was

subsequently, but whether he was at that time I have no recollection.

Q. Now was there any arrangement or arrangements of Mr. Untermeyer and Mr. Beard and the parties who deposited this fund in the Northern Trust Company with Mr. Stein and others as to how the securities of the company should be distributed?

A. You mean any arrangement other than the options?

Q. Yes.

A. None that I ever heard of.

Q. Wasn't there some plan, some arrangements whereby the bonds which were delivered to Mr. Stein, the stock which was delivered to him aside from the stock which was delivered to the mill-owners should be distributed by him?

523 A. Not that I ever heard of, certainly none that I ever had any part in or the firm of Dupee, Judah & Willard.

Q. You never knew anything about that?

A. No, sir; never.

Q. Have you the letter of Mr. Samuel Untermeyer, requesting you to draw the checks for him?

A. Mr. Samuel Untermeyer was in Chicago at that time——

Q. It was a verbal contract?

A. —and he went over to the Northern Trust Company and arranged for a deposit in his name, and attended to everything personally, and subsequently asked me to—said that he wished that I should act as his attorney-in-fact in making these checks, and, I believe, deposited a written power of attorney with the Northern Trust Company.

Q. I will ask you to look at that (handing paper to witness).

A. That is the copy of the order——

Mr. DUPEE: It is the order.

Q. Is the order given by the company and by your firm to the Northern Trust Company to deliver to Mr. John D. Hood twenty bonds, is it not?

A. Yes, sir.

Q. How was the arrangement determined that the bonds should be delivered on the joint order of the company and of Dupee, Judah & Willard?

A. How was that arrangement made?

Q. Yes; what was the reason, the occasion for it?

A. The Northern Trust Company delivered the bonds to the Columbia Straw Paper Company after they were certified; then the suggestion was made by some one who was present that it was a dangerous thing to allow an issue of bonds to be in a vault such as there was in any office building in Chicago, in shape payable to bearer, and——

Mr. DUPEE: These bonds were payable to bearer?

A. All of these were at that time payable to bearer. The bonds had originally, that is the temporary bond certificate for a thousand bonds, the entire issue, had been issued to Mr. Stein, and he had

surrendered that certificate and ordered the bonds to be, the temporary bond certificate to be split up into smaller parts, and these certificates bore the name of the company, the company not having at that time had the bond printed, lithographed or engraved, and I think Mr. Stein asked Mr. Heurtley if the bank would hold the bonds until they were called for. Mr. Heurtley said that he did not want to do it, that the vault-room was very much taken up, but he would accommodate him, and these temporary bond certificates were surrendered to the company, orders like these were given out, 524 and so that the parties might go to the trust company and get the bonds referred to, as called for by the temporary bond certificate.

Q. This is the receipt of the Northern Trust Company to the Columbia Straw Paper Company for one thousand bonds, and stating that the Northern Trust Company agreed to deliver the bonds as directed by the Columbia Straw Paper Company, through Mr. Beard, the president, and Mr. Stein, the treasurer, and the order countersigned by the firm of Dupee, Judah & Willard (handing paper to witness)?

A. Yes, sir.

Q. Why was the receipt put in the shape that it required the order of the Columbia Straw Paper Company to be countersigned by Dupee, Judah & Willard?

A. I think that was done at the request of Mr. Heurtley, who felt that in accommodating the Columbia Straw Paper Company he ought to have some sort of assurance from Dupee, Judah & Willard that these certificates were all right, so that it could not get into any trouble by delivering to the wrong parties, or so that they would not be put to any annoyance arising out of the identity of the parties, it was simply to prevent the bonds getting into wrong hands.

Q. Was that partly because the Northern Trust Company knew that Mr. Stein was merely a conduit and not the real party in interest?

A. No, sir.

Q. In this contract between him and the Columbia Straw Paper Company?

A. No, sir; I do not think the Northern Trust Company ever thought so.

Q. Mr. Stein says it was so?

A. I do not know what Mr. Stein says.

Q. How much of the money that was deposited in the Northern Trust Company of money that went into the Columbia Straw Paper Company did Mr. Stein himself put up?

A. Personally?

Q. Yes.

A. I do not know that, a good many checks came to Mr. Stein, I did not know what his private arrangements were.

Q. Was he regarded as a man of means during the fall of 1892?

(Objected to by counsel for complainants as immaterial.)

A. Yes, sir; along there, a man might be regarded as a respon-

sible man who has not got over one hundred thousand dollars, and who is not good for a million. I know Mr. Stein did have a
525 bank account at the Northern Trust Company at one time that was very respectable, in fact it was very large.

Q. When was that?

A. Oh, I do not recall, but it was about this time.

Q. About that time?

A. I know that he had an account at Waukegan, what it was, I do not know.

Q. Now, that receipt of the Northern Trust Company was drawn by you, was it not?

A. The original of that is in my handwriting, and is the result of negotiations had with Mr. Heurtley. (Referring to receipt heretofore read in evidence.)

Q. Do you know of any agreement between Mr. Stein, Mr. Untermeyer and Mr. Beard, and the other gentlemen who were engaged in promoting this enterprise, whereby he agreed to distribute to these gentlemen certain of the stocks and bonds of the company?

A. No, sir, I never heard of any agreement; I never saw one and I have no knowledge of one.

Q. Now, what knowledge, if any, did you gain as to how much money Mr. Stein put into the organization of this enterprise?

A. I cannot answer that question, Mr. Gresham; I may have known at one time, but I do not recollect at the present time how much money Mr. Stein put in, I know he put in some money, but whether it was his own, or whose it was, I have no knowledge at the present time. Mr. Stein did have a number of bonds at one time, but what he did with them, or whether they were his—

Q. These orders you gave on the Columbia Straw Paper Company would show the number of bonds he got?

A. Yes, the orders I countersigned for my firm, yes; what he did with them or to whom he sold them, or what understanding he had with other parties, I do not know.

Q. I believe, Mr. Wolf, that the receipts will show that there were probably no bonds distributed by the Northern Trust Company without an order countersigned by you, so that in that case you would be able to tell how many bonds Mr. Stein received unless he received bonds in the name of some other party, would you not?

A. I should say so, yes.

Q. I will ask you if it is not a fact that the bank account which Mr. Stein had in the Northern Trust Company was not prior some considerable time, to the time these transactions were going on whereby the money was distributed to the various mill-owners?

(Counsel for Columbia Straw Paper Company objects to
526 the question on the ground that it is going into the personal affairs of Mr. Stein.)

Recess until 2.15 p. m.

2.15 p. m.—Continuation after recess.

Present: Mr. Dupee, Mr. Gresham.

HENRY M. WOLF.

Direct examination (continued) by Mr. GRESHAM:

Q. (Last question read.)

(Counsel for complainants also objects to the same question on the ground that they ought not to wander off in the examination into the private affairs of the men and individuals when the matter cannot affect this case in any way.)

Mr. GRESHAM: The purpose of the examination is to show that Mr. Stein had no other interest in the financing of the company than that he was the medium through which the gentleman who furnished the funds which financed the company, were passed to the mill-owners, and the corporation and that somebody was back of him, and that he alone was not able to make this proposition and carry this scheme through.

Mr. DUPEE: Whatever answer would be given to the question would not effect the result.

The MASTER: I see no objection to that question, that is, it relates to a matter which has already been gone into.

Mr. DUPEE: My only objection is, it is irrelevant but I would rather it would go in subject to objection than waste much time on it.

The MASTER: You can answer the question.

(Question read.)

A. I should say not, from my best recollection.

Q. Mr. Wolf, from the orders which were presented to the Northern Trust Company it appears that 167 bonds were delivered to John D. Hood, one of your clerks, and I believe the party that you testified about this morning. For whom did Mr. Hood act as messenger in getting these bonds from the trust company, if you know?

A. I would have to look at the receipts of the various numbers.

(Orders referred to handed witness.) I think it would be
527 necessary for me to refer to a memoranda which I have to show where these various bonds went.

Q. Well, if you prefer to consult your memorandum we are willing to wait until you do, and this question can be answered after you refer to any memorandum or memoranda.

A. I have some, not all, I do not think I have all, I do not know, let me see. (Examining orders.) Mr. Hood at this time—at the time referred to in these various orders, was in the employ of the Columbia Straw Paper Company on a salary and I think among his duties was looking after the temporary bond certificate book, and the delivery of the certificates in accordance with the certificates themselves after these certificates were surrendered and canceled, that is, if a certificate called for five bonds, he would make out an order like this and ask me to sign it, and then ask Mr. Stein or Mr. Beard, as the case might be, too; I think he would ascertain

first and then ask me, and then he would get these bonds and present them to the party who presented the certificate.

Q. This is what you call a temporary certificate?

A. It was a printed form, a temporary bond certificate and issued in anticipation of the bonds which were at that time being lithographed or engraved.

Q. Why would not the parties present their certificates themselves?

A. Some of them did, a great many of them did.

Q. I mean these certificates which Mr. Hood presented, why did not the different parties who had certificates calling for bonds present them themselves to the Northern Trust Company?

A. I presume it was simply a matter of accommodation on the part of Mr. Hood.

A. (Continuing:) He prepared all these printed blanks as a rule and he kept that book, as I am telling you, and it was necessary for him to go over to the Chamber of Commerce building, for example, to get Mr. Stein's signature and in order to avoid sending a party over there and then sending him downstairs, would say, I cannot attend to this now but I will get Mr. Stein's signature and deliver the bonds to you tomorrow if you come in. That was the reason he was nominated in these various orders. You understand?

Mr. GRESHAM: I understand now.

A. (Continuing:) Bonds 856, 857, 858, 859 and 860 were delivered to Richard T. Higgins—

Q. By Mr. Hood?

A. By Mr. Hood. Bonds numbered 866, 867, 868 and 869 were delivered to E. P. Hooker by Mr. Hood. Bonds numbered 831 to 850 inclusive, were delivered to Theodore W. Sterling by Mr. Hood.

528 Q. Who is Mr. Sterling, Mr. Wolf?

A. Mr. Sterling?

Q. Who was he?

A. He was a gentleman who I believe lived at the Union League club in New York city and was a son-in-law of the late Judge Dillon, a friend of Mr. Stein's, I met him once in New York.

Q. Do you know whether his estate is settled up?

A. No, I do not, I have no knowledge about his estate. I say they were delivered to Mr. Sterling, they might have been delivered to Mr. Sterling's executors.

Q. Was Mr. Sterling a resident at any time of St. Louis?

A. I should not wonder, I do not know. All these gentlemen whose names I have read, both Mr. Higgins, Mr. Hooker and Mr. Sterling were non-residents and the chances are that these certificates came in the mail to Mr. Hood.

Mr. DUPEE: You mean the temporary certificates?

A. Yes, sir; the temporary bond certificates, or they might have come to Mr. Stein and Mr. Stein asked Mr. Hood to attend to these, I don't know as to that.

Bonds numbered 875 to 887 were delivered to Mr. Stein and I think he delivered them to John Silk, of Massillon, Ohio.

Q. What was his business?

A. He was a paper man, a mill man, who took bonds.

Bonds numbered 1 to 35, both inclusive, 781 to 796, both inclusive and 811 to 815 both inclusive, being fifty bonds, were delivered to Henry M. Wolf, trustee, on the 29th day of December, 1893.

Q. Who were your trustees for Mr. Wolf at that time?

A. I was trustee for the Columbia Straw Paper Company, Philo D. Beard, Emanuel Stein, Frederick C. Trebin, Richard T. Higgins, Benjamin M. Frees, Elbridge C. Church, Samuel Untermeyer, Randolph Guggenheimer and John B. Halladay, these bonds were deposited—well, I should have to look that up a little further to see where these particular bonds went to.

Q. All right. Possibly it will refresh your recollection, didn't they go to the Ridgley national bank at Springfield?

A. They went either to the Ridgley National Bank of Springfield, Illinois, or the Savings & Trust Company of Cleveland, Ohio, and my impression is I can find out very readily by reference to some memoranda whether these bonds did go to the Ridgley national bank at Springfield, Illinois, and are reissued and endorsed in their name, and they were deposited with that bank as collateral security as against certain notes of fifty thousand dollars assumed by the Columbia Straw Paper Company.

529 Q. Whose notes were these?

A. They were the notes of Emanuel Stein. I have no personal interest whatever in the bonds, I am not sure whether I deposited the bonds in person, or whether it was done by some one else.

Q. Did the firm of Dupee, Judah & Willard?

A. No, sir, and the firm of Dupee, Judah & Willard, and no member of that firm had the slightest possible interest in these bonds.

Q. What interest did these gentlemen for whom you were trustee have in depositing these bonds as collateral securities with these notes of Mr. Stein's?

A. They had loaned these bonds to the company my recollection is, loaned these bonds to the company and put the title of them in the Ridgley national bank and requested me to see that the interest coupons were collected and the proceeds of the coupons, and the cash and money remitted to them as their interest might appear.

Q. Why was it that Mr. Stein was not able to take care of these notes of his?

A. You will have to ask Mr. Stein about that, the company assumed, I think, in fact I know the company assumed the notes in consideration of certain concessions made by Mr. Stein to the company, certain stock, that was turned over to secure the company and indemnify it on account of these payments, on account of making or assuming these notes.

Bonds 36 to 80 were delivered to Henry M. Wolf, trustee, myself, for exactly—as trustee for the same persons for substantially the same purpose and they were lodged by me with the Savings and Trust Company of Cleveland, Ohio.

Q. That was to secure a note of Mr. Stein's which was assumed by the company?

A. No, that was the note of the Columbia Straw Paper Company, or a series of notes made by the Columbia Straw Paper Company.

Q. Was any stock put up at the same time as collateral on the same notes?

A. Yes, there was; I have forgotten just how much stock, but—

Q. About how much?

A. Well, I do not recollect, forty-five or fifty thousand dollars, I am not clear as to the amount.

Q. Who put up this stock?

A. It was put up by the company, it was stock which had been transferred to the company.

530 Q. By whom?

A. By Mr. Stein. And that stock has all been returned.

Q. Do you know what the consideration of that transfer was?

A. Yes, sir; it was the modification of the original contract which was entered into on the 15th of December, 1892.

Q. The original contract between whom?

A. Emanuel Stein and wife and the Columbia Straw Paper Company.

Q. Is that modification in writing?

A. Yes.

Q. Do you know where it is?

A. I have a copy of it as trustee.

MR. GRESHAM: I will ask you to produce it some time for our inspection.

Q. What was the cause of that modification?

A. I had nothing to do with it, so you will have to look at the paper itself; I was selected as trustee without knowing anything about it and consented to act, and I was simply the agent of the parties, I had no personal interest in the matter whatever, as the paper shows.

Bonds 925 to 929 were delivered to Mr. I. Blumenthal, formerly of Cincinnati, and now I think of Chicago, or Battle Creek, Michigan.

Bonds 935 and 936 were delivered to Henry W. Leman, trustee.

Bonds 930 to 934 were delivered to George Edwin Jones.

Q. Who is George Edwin Jones?

A. He is a broker who lives in Chicago.

Bonds 900 to 904, both inclusive, were delivered by Mr. Hood to Noble B. Judah.

Bonds 915 to 919 were delivered by Mr. Hood to Frank Wells.

Q. Who is Frank Wells?

A. He is a broker of Chicago, a real-estate broker and capitalist.

Q. Noble B. Judah is the Judah of Dupee, Judah & Willard?

A. Yes, sir.

Bonds 920 to 924 were delivered by Mr. Hood to Gardner G. Willard, of Chicago; he is a member of the firm of Dupee, Judah & Willard.

Bonds 658 to 665 were delivered to Henry M. Wolf.

Q. Were these bonds you purchased?

A. No, sir; they were the bonds that were paid us, paid to my firm as part of its fee.

Q. Fee for what, Mr. Wolf?

531 A. Fees for legal services in connection with the examination of the various titles of the various properties, attending to the conveyances and closing up the sales of the various properties.

Mr. DUPEE: I suggest that you speak of Mr. Judah's bonds in this connection.

Mr. GRESHAM: Is the same true of Mr. Judah's bonds?

A. No, sir. Mr. Judah's bonds were paid for; these bonds that I have referred to above.

Q. Who owns these bonds now that you received as part compensation for your services?

A. I do not know who owns seven of them: I know who owns one, or rather I really sold one; I sold two of my bonds and do not know whether I sold this particular bond or not.

Q. Whom did you sell them to, do you recollect?

A. Yes; I sold them to Thomas G. McLaury and N. H. Porter. Bonds numbered 910 to 912 were delivered to Henry M. Wolf; three bonds which I bought and paid for.

Q. Who did you buy them from?

A. Emanuel Stein.

Q. What did you pay for them?

A. I paid for the bonds and stock that went with it a thousand dollars and interest at the rate of two and one-half per cent.

Mr. DUPEE: On each of the bonds?

A. On each of the bonds and the accompanying stock.

Q. How much stock did you get with each bond?

A. I think it was twenty per cent. of preferred and forty per cent. of common, that is my recollection.

Q. How many bonds do you and the other members of your firm now hold?

A. I cannot answer for the other members of my firm; I can answer for myself.

Q. Will you answer for yourself?

A. I hold four.

Q. Do you know whether the other members of the firm hold any bonds or not?

A. I do not know anything about their dealings in the bonds or stock. It is a private matter and it was a private matter, excepting the eight bonds, and I never knew anything about their arrangements in regard to that whatever, in respect to this matter or any matter, unless I happened to be told, and I had not heard of this matter.

Q. Was there talk amongst the members of the firm as to how many bonds they would take?

A. When?

Q. Why, during the progress of the organization of the company and passing title and so forth?

532 A. There was after the company was organized, I think, some talk; I think I came to subscribe in this way, I had been a stockholder of the American Straw Board Company from its start; I bought stock, as I was told, on the inside.

Q. Of the American Straw Board Company?

A. Yes; I paid one hundred and six dollars a share and subsequently received a rebate of a dollar and a half a share, and the company was a very successful one, its earnings were very large, and it paid dividends of two per cent. quarterly, regularly at that time, and during the year 1893 I understood its earnings would be in the neighborhood of three-quarters of a million—

Q. The American Straw Board Company you are talking about?

A. Yes, and I thought this would be a good investment.

Q. The straw paper company?

A. Yes, the stock and bonds on the terms offered.

Q. You say you paid one hundred and six for straw-board stock?

A. Yes, and subsequently got a rebate of one fifty a share.

Q. So it made the cost to you, one hundred and four and a half?

A. Yes, sir.

Q. What did you sell your straw board at?

A. I did not sell when the stock reached one hundred and twenty or higher; if you care to know what I did get, I shall tell you if it is material.

Q. It is not material.

A. When I was interrupted I was about to say that from all the information I could get, the straw paper company, as a business enterprise, seemed fair to be far superior to straw board. I remember at one time having talked very fully on the subject with Mr. Sherwood, who at that time certainly succeeded in convincing me that straw paper would be worth more than straw board, to say the very least.

Q. When was it you had this conversation with Mr. Sherwood?

A. Oh, I should think, oh, some time in November, 1892.

Q. Was that conversation between you and Mr. Sherwood, had at the University Club?

A. No, I do—in that conversation at the University Club Mr. Sherwood particularly referred to his experiences in attempting to organize the straw paper company in 1890—

Q. I am not asking you for that conversation now.

A. No, that conversation was subsequent, it was a conversation that I had with Mr. Sherwood on one occasion, when he told
533 me I had put him through the worst cross-examination he had ever been through in his life, and told me, furthermore, that I believed he had some side commissions or would never have asked him such searching questions on the values of property.

Q. What values of property were you asking about?

A. The mill properties which he was telling about.

Q. Were those the mill properties which went into the Columbia Straw Paper Company?

A. Yes, sir.

Q. And that was prior to the organization of the company?

A. It was while the company was being organized.

Q. And in these conversations did he tell you the values of the mill properties as he understood them?

A. Yes, sir.

Q. And the figures at which they could probably be purchased?

A. He told me the figures, he told me some of the figures at which they could be purchased, and told me what the properties were; I think I got more information from Mr. Sherwood on that subject than I had previously had.

Q. And you were seeking that information at that time?

A. Why, I certainly was.

Q. And he knew all the values of the properties and the figures at which they might probably be acquired?

A. Not all he knew, but I learned a great many things he said, but whether it was all he knew—well, I have since learned some of the things he told me were not true; for instance, he told me that he was not going to get any commission on the sale of any of these mills; I subsequently learned that he had sued Mr. Robertson for fifteen thousand dollars.

Q. That is the only instance in which he got a commission?

A. No; I do not say that.

Q. That you know of?

A. I don't say that.

Q. If you are willing to make any statements then—

A. You mean saying he did not get commissions in excess of that?

Q. You do not know whether he got any other commissions?

A. I do not say that; I say that I have heard it said.

Q. When was it, what year, about what date, that you acquired this straw-board stock at one hundred and four and a half?

A. Oh, my recollection is that it was in 1888 or 1889.

Q. Long prior, at any rate, to the time that the Columbia Straw Paper Company was being organized?

A. It was some time prior; yes, sir.

534 Q. Did you know, in a general way, during October and November, 1892, who would probably take the bonds and securities of the proposed Columbia Straw Paper Company, other than the stock which would go to the mill-owners?

A. I do not think I knew at that time; no, sir; I had nothing whatever to do with the financing of the company, and no one in our office.

Q. Did you learn anything about who was going to finance the company?

A. I always understood it would be done through Mr. Stein and Mr. Stein's friends. Mr. Stein has a large acquaintance and influential friends.

Q. Do you know whether Mr. Beard was going to take part in financing the company?

A. My best recollection is that at that time I knew nothing about it.

Q. Did you know that Mr. Untermeyer was to take any part in the financing of the enterprise?

A. I think that Mr. Untermeyer—well, I knew subsequently, he took some of the bonds and some of his friends took some of the bonds.

Q. I am talking now about October and November, 1892?

A. I am not clear as to the time, my impression is that at that time I had no knowledge on the subject.

Q. Well, as soon as the money was placed in your hands by Mr. Untermeyer, you understood that he was interested in financing the company?

A. Oh, yes; but that was later.

Q. When was that? You may have stated that this morning.

A. It was never placed in my hands.

Q. I mean placed in the Northern Trust Company?

A. The account was opened, I think I can tell exactly, about the 27th day of January, 1893. Prior to that time I think he had money on deposit there, or rather, there was money on deposit in his name, but whether it was his, or whether it was some party's that he represented, I do not know; I had no power of drawing on that money; had nothing to do with it.

Q. Do you know, Mr. Wolf, that the only money furnished by Mr. Stein to the company, or for its benefit, in this transaction, was one million dollars?

A. I do not understand your question quite; I do not understand what you mean, Mr. Gresham.

Q. Well, you understood that the company made a mortgage to secure the issue of a million bonds?

535 A. Yes.

Q. And that these bonds were taken?

A. Yes.

Q. Were taken at about par, as you claim?

A. With the securities, with the stock, together with the stock, yes.

Q. Well, I say, did the company get from Mr. Stein, or any one else, or was money expended for the benefit of the company in any other amount than this million dollars?

A. You mean more than a million?

Q. Yes?

A. I think so.

Q. By whom?

A. Why, I think, Mr. Stein put up that additional money.

Q. How much?

A. I do not recollect the amount now. That money was paid to the Columbia Straw Paper Company, I think, and I do not believe it came into my hands, I do not recollect whether it did or not.

Q. Was that more than the two hundred thousand dollars, which Mr. Stein agreed to pay into the treasury of the company?

A. I did not distinguish in that way, I simply knew what the lump sum was.

Q. You knew at the time in a general way what it was?

A. Yes, certainly, I did, at the time.

Q. Well, now, you know that Mr. Stein received——

The WITNESS: One statement here, in addition to the cash that was deposited, a large number of the mill men took bonds in place of cash, getting with it also the twenty per cent. of preferred stock and the forty per cent. of common; that was a very considerable sum.

Q. Do you know how many of the mill men took bonds?

A. I do not recollect what they were now.

Q. Do you know what the amount of bonds they took aggregated?

A. No, I do not, but it was between one and two hundred thousand dollars, I have not any fair knowledge, but I can give some of the names, I do not recollect all of them. It is some considerable time ago, and I have not refreshed my recollection for the purpose of being examined at all.

Q. Do you know that the stock was issued either to Mr. Stein or to his nominees, other than the stock that went to the mill-owners?

A. Other than the mill-owners, all the stock went to Mr. Stein in the first instance.

536 Mr. DUPEE: Including that to the mill-owners?

The WITNESS: I am not so sure about that, but I think not.

Mr. GRESHAM:

Q. Now the mill men who took bonds, did not pay money into the treasury in place of those bonds, did they?

A. Certainly not, nor was any money paid to them.

Q. Then the company got no money for those bonds, it got property, didn't it?

A. No, the mill men were entitled to a certain amount of cash. He had the privilege, the mill man did, of calling either for so much cash or so many bonds, with preferred and common stock——

Q. Yes?

A. —and in lieu of so many dollars in cash going to him, when it came to the settlement, the securities went to him.

Q. So that the company then for the bonds which went to the mill-owners, did not get cash?

A. The company got property for everything, for everything, they did not get any cash excepting the original cash subscriptions and working capital.

Q. What was the original cash subscriptions?

A. Eighteen hundred dollars I think it was.

Q. What was the working capital?

A. Two hundred thousand dollars. The bonds were all paid for in full, every bond, there is no question about that.

Q. And the working capital is represented partly by the bonds? In other words, the two hundred thousand dollars which you said

was put in the treasury, the company issued against that two hundred bonds?

A. Well, it was not done that way, the contract shows how that was done.

Q. I know, but that was the fact of it?

A. You can see from the contract how it was done, I have not the language of the contract in mind at all really.

Q. The language of the contract was, as I understand it, that Mr. Stein should have this million bonds and four million stock, and for that he was to convey the properties to the corporation and put two hundred thousand dollars in its treasury?

A. Yes, and pay all the expenses of the organization, all of the expenses of recording deeds, mortgages, for abstracts and other fees and things of that sort.

Q. Now where was the stock issued which went to Mr. Stein, in your office?

A. You mean, was it written out there?

Q. Yes.

A. That I do not remember, I did not attend to it, so I do not know, I had not the books.

537 Q. It probably was, wasn't it, because the stock was issued there?

A. A great deal of the stock I think was issued—not a great deal, but some of the stock was issued in the East before the temporary books were sent out here. There were temporary stock books also.

Q. And then permanent books?

A. Permanent books afterwards.

Q. And were the temporary books sent here?

A. I think so, yes.

Q. And the permanent books also?

A. I do not remember about the permanent books, they may have been, yes, I think they were here for a time.

Q. And the portions in the permanent books were probably taken here, were they not?

A. I do not recollect, I did not pay much attention to the matter after the company was organized; I was not running the stock books, as I have explained to you, and I do not know at this time. If I had the books before me, I could tell, but without them I cannot say with any positiveness.

Q. In the conversations which you say you had with Mr. Sherwood, did you make any statement to him to the effect that your firm would take any of the bonds, or subscribe for any of the bonds which were to finance the company?

A. Never; my firm has never to my knowledge, as a firm, done any trading business of any kind, or financial business of any kind; as individuals I suppose that once in a while they buy securities on their own account, and I know that I have taken them, and I assume that they have had occasion to but they never have done anything as a firm, and I never have told any one that they have.

Q. Did you state that the individual member of the firm would

probably take or consider going into a syndicate that would finance the company?

A. Never; I never heard any syndicate talked of, I simply know I was offered some of the bonds and stock and I know——

Q. When were you offered that?

A. I do not recollect.

Q. Were you given to understand before the company was organized that you would have the privilege of subscribing for some of the——

A. I never subscribed for anything.

Q. —privilege of taking some of the stock?

A. I think I may have told Mr. Stein at some time that I
538 would take some of the stock—or some of the bonds, and probably did, but just when I made up my mind on that point I cannot say.

Q. Of course it was before the final closing of the transaction, was it not?

A. I say I cannot answer, that I do not remember.

Q. Did you know then how much of the preferred and how much of the common stock would go with each bond to any party?

Mr. DUPEE: At what time?

Q. (Continuing:) At the time you told Mr. Stein you would probably want some of the bonds?

A. No.

Q. That was determined on in advance of the organization of the corporation, was it not?

A. Not so far as I was concerned; no.

Q. Who was that determined by?

A. I had nothing to do with that, so I do not know.

Q. Do you know whether Mr. Beard and Mr. Untermeyer determined as to how the common and preferred stock other than the common and preferred stock which went to the mill-owners would be distributed to the bondholders?

A. No, not as I recall it at present.

Q. Did you ever hear that referred to or spoken of by anybody?

A. I never was present at any meeting when the question of financing the company or anything of that sort was discussed.

Q. If meetings of that kind were held, they were not held in Chicago?

A. If they were held in Chicago, they were not in my presence.

Q. Did Mr. Beard ever tell you——

A. I told you this morning that to my recollection I saw Mr. Beard the second time around the middle of December.

Q. And this matter was not put through in January and February?

A. No, the company was organized prior to that time.

Q. Certainly, but the securities were not distributed until April, were they? That is your recollection? So there was ample opportunity to have made statements to you, was there not?

A. I have answered that very fully; I have no other recollection at the present time other than that.

Q. How long before you took the bonds was it that you learned that there would be a donation of preferred and common stock with each bond?

A. I never heard anything about a donation.

539 Q. Sir?

A. I never heard anything about a donation.

Q. Well, about a gratuity.

A. I never heard anything about a gratuity. I heard that the thousand-dollar bond and twenty per cent. preferred stock and forty per cent. of common—that is my recollection now—

Q. Could be had for one thousand dollars?

A. —could be had for one thousand dollars just in the same way as when Lake Street Elevated bonds were sold, they carried one hundred per cent. of stock with them, at least that is my understanding, the same way a good many of these corporate bonds are sold, and some industrial bonds.

Q. Let me understand you. One bond which called for a thousand dollars was accompanied with two hundred dollars of preferred stock and four hundred of common stock?

A. My recollection is that it is that, but yet it may be one hundred dollars and two hundred dollars.

Mr. DUPEE: Can you ascertain it?

The WITNESS: I can ascertain it; I have been up all night and I am rather the worse for wear, but I want to get on with the examination and want to get through with it, and that is the reason I am here today.

Q. Did Mr. Samuel Untermeyer ever come here to Chicago prior to January, 1889, with reference to the organization and the transfer of the plants to the corporation?

A. I do not remember whether he did or not; he was here the latter part of January; he might have been here in December, 1892.

Q. Did you see him in New York during that period?

A. I happened to be there on other business and I have no doubt I did see him.

Q. Did you consult with him with reference to the organization of this company and the method by which securities would be gotten out?

A. I do not recollect whether I did.

Q. You might have done so?

A. I may have consulted with him about certain matters connected with the transfers of the property, but not with respect to the issuance of securities, because that was something I had very little to do with, and yet I might have been talking to him about the matter; but, as I say, I am not clear at this time whether we ever discussed any of these matters. I had nothing to do with the finances excepting in the way I have already testified.

Q. Now your firm, or some individual member of your
540 firm, disposed of some of these bonds for Mr. Stein and some
of the members of the syndicate?

A. The way that was, was this: Mr. Willard took some of their securities and he thought it was a good investment, and he spoke to his brother about it—that is, Mr. Gardner G. Willard, and the other securities that were sold by Mr. Stein were sold in practically the same way; there was no attempt made; we simply thought that here was a good investment and they were sold in that way.

Q. Now, was the regular, the permanent certificate for the stock, put out about the time that the trustee company delivered the engraved bonds along during the same period, was it not?

A. I do not remember, I think it was—the permanent engraved certificates?

Q. Yes.

A. I do not remember. There was some delay about getting out these certificates and I do not remember just when they were prepared. I do not remember when they were gotten out. As I have said, these books were looked after if they were in our office by Mr. Hood, and I had nothing to do with them; it was clerical work I did not interfere with.

Q. Now, this order of April 8th to the Northern Trust Company, directing it to send 469 of the bonds to Mr. Samuel Untermeyer by express in New York, was sent in that way because Mr. Untermeyer was in New York at the time, I presume?

A. Presumably, yes, sir, although I do not know whether he was in New York at that time.

MR. DUPEE: What was the date?

THE WITNESS: April 8, 1893.

MR. GRESHAM: Do you know how Mr. Untermeyer got his stock which would have gone with these bonds according to the arrangement?

A. You mean to say, whether it was delivered to him at that time?

Q. Yes; how he got the stock that he would have gotten in accordance with the scheme of distribution of the stock along with the bonds.

A. No, I do not; I simply—I recollect that order, and that is all I do recollect; I do not think any stock was delivered at this particular time.

Q. Now, you probably got from Mr. Untermeyer his temporary certificate for bonds?

A. No; the temporary bond certificate was in New York at that time.

Q. I am not asking about the bond book, but the temporary certificate which Mr. Untermeyer had calling for these 469 bonds, was probably sent by him to you?

A. The temporary bond certificate?

Q. Yes.

A. No, sir; I remember distinctly that they were not.

Q. How did you come, then, to make that order on the—

A. Simply because I was told to do so.

Q. By whom?

A. Mr. Untermeyer held the order; his friends—the people who

owned these particular bonds, had the certificates—the temporary bond certificates—in the East, and my recollection is that they agreed to deliver these; they wanted these bonds delivered in New York, and said they would then surrender the certificates in New York, and after some talk with Mr. Stein and some telegraphing back and forth it was concluded advisable to send these bonds, called for in this order, down to New York; the temporary bond certificate book also went down at that time, my recollection is, and they were delivered out. It went back to the office of the company; subsequently I learned through Mr. Hood that all of the certificates called for by this order had been duly canceled and surrendered.

Q. To the company?

A. To the company.

Q. At its office?

A. Yes.

Q. Now, Mr. Wolf, as a friend of Mr. Untermeyer and as his representative in the distribution of this fund, did not you also look after procuring from the company his portion of the preferred and common stock?

A. No, sir.

Q. You did not?

A. I did not.

Q. Do you know who looked after that for Mr. Untermeyer?

A. Mr. Samuel Untermeyer.

Q. Himself?

A. Himself.

Q. Do you know what became of the temporary stock certificates, the certificates for the bonds and the temporary stock certificate book, and the temporary bond certificate book?

A. I do not know what—which do you want?

Q. All of them. (Last question read.)

A. The temporary bond certificates were all surrendered and cancelled and fastened into the temporary bond certificate book. That book is in my office at the present time, in my private room, together with a lot of old lumber; as I have said, no one has
542 ever called for it. The temporary stock certificates and the temporary stock certificate book I presume, are where they ought to be, they are not in Chicago to my knowledge.

Q. Where do you think they ought to be?

A. They ought to be with the officer of the company in New York or New Jersey who has these things in charge; I know they are not here. I know that I have not them and I have not seen them for years.

Q. They were here at one time I presume?

A. I have already testified about that, Mr. Gresham.

Q. They were turned over to the Columbia Straw Paper Company were they not, at least they went from your office to the office of that company?

A. They were never in my possession excepting in the sense these were in my office as these papers are here on Mr. Bishop's desk, there was some employé of the company who had them in charge.

Q. Well now, the company removed these temporary certificate books from your office?

A. Oh yes.

Q. So that the last you know of it, it was in the possession of the Columbia Straw Paper Company?

A. Yes, that is, we delivered to the Columbia Straw Paper Company, Mr. Hood took the books over there and that is all I know about them, I think the last I heard of the books they were at the New Jersey office; I am not clear about it, but that is my opinion.

Q. Were there ever any preliminary conferences here in Chicago during the months of October and November, 1892, of the mill-owners with reference to placing their properties in—

A. None in those months to my recollection.

Q. Were there any during the month of December?

A. I think there was one.

Q. Where was that meeting?

A. In our office.

Q. Of Dupee, Judah & Willard?

A. Yes, sir.

Q. Were any statements or representations made by you or by any person present as to whom the first board of directors of the company proposed to be organized would be, at that meeting?

A. Not to my recollection.

Q. Was there any talk as to who the first board of directors would probably be, at that meeting?

A. Not in my hearing.

Q. Was there any meeting in your office of the gentleman who it was understood, who seemed to understand themselves, 543 that they would be the first board of directors of the Columbia Straw Paper Company on or about the 17th day of December, 1892?

A. No, sir; not to my knowledge. Mr. Stein had his office in the same building at that particular time and there might have been a meeting in there of such a character, but there never was such a meeting that I had any knowledge of.

Q. I will ask you if there was not a meeting in your office in this city on the 17th day of December, 1892, on or about that date, at which Mr. Samuel Untermyer was present, also Mr. Philo D. Beard, Mr. F. C. Trebein, Mr. E. Gilbert Church, J. B. Halladay, B. M. Frees, Richard T. Higgins and Emanuel Stein, and Charles B. Robertson of Lafayette, Indiana, at which it was stated and understood and agreed that the first board of directors of the Columbia Straw Paper Company would be the following-named gentlemen: Philo D. Beard, F. C. Trebein, E. Gilbert Church, J. B. Halladay, B. M. Frees, Richard T. Higgins, Emanuel Stein, Augustus P. Brown and William C. Heppenheimer?

A. Will you let me see the names please?

(After referring to page 12 of printed copy of cross-bill.)

The WITNESS: Are those all the names?

Q. Yes.

A. Did you put any of the names in there?

Q. The question does not assume that Mr. Brown and Mr. Heppenheim were present?

A. I do not think there was any formal meeting; these gentlemen might have been there, but I do not recollect personally of having attended such a meeting; that is, some of them or all of them, I do not remember. There were a number of meetings held at that time quite informally.

Q. At your office?

A. They might have been held at Mr. Stein's office, his temporary office, or in mine.

Q. What was Mr. Stein's temporary office?

A. He had an office in the Adams Express building and had an office in the Pullman building, and afterwards in the Chamber of Commerce, as a matter of convenience, and because he had so much running back and forth to do, he being a large, heavy man, and as a matter of convenience he took an office in the Adams Express building; he might have had a meeting there that I knew nothing about. I was engaged in examining abstracts, drawing papers, and other things; and I did not attend any meetings there.

Q. But this meeting, you say, did happen to be held in your office?

A. There was one meeting I particularly remember, but I
544 do not recollect that Mr. Untermeyer was present at that meeting in December.

Q. Well, at any of these meetings that you recall, was it discussed as to who the first board of directors would be?

A. No, sir.

Q. Nothing said as to who the first board of directors would be?

A. No, sir; I never had anything to do with the board of directors of the company at all.

Q. No statement made by any of the gentlemen named as to who the first board of directors would be?

A. Not to my recollection; I have answered that, I think, already. I remember once Mr. Sherwood's saying to me that he thought that Charlie Robertson and J. C. Richardson would be good men on that board of directors; I remember, as we were walking down to the train one evening, but I told him at that time, it was a matter I had nothing to do with, and did not know anything about, and I think that was the only occasion I ever heard of either of these gentlemen acting as a board of directors.

Q. Now, you state in your answer, cross-bill, that the gentlemen named, that is Philo D. Beard, Fred C. Trebein, E. Gilbert Church, J. B. Halladay, B. M. Frees, Richard T. Higgins, Emanuel Stein, Augustus P. Brown, and William C. Heppenheim, did not form the first board of directors (along the latter part of the answer, the last two or three pages of the answer) did not form the first board of directors of the Columbia Straw Paper Company, and that Philo D. Beard, William C. Heppenheim and William C. Taylor were

the first board of directors. Now, who else constituted the first board of directors, as you understand it?

A. Why, there were some men in the East who were on that board of directors.

Q. Who were these men?

A. I think Maurice Untermeyer, J. C. Guggenheimer—I do not recollect the other names; I know there were other gentlemen whose names I do not recall.

Q. Who was Maurice Untermeyer?

A. He is a member of the firm of Guggenheimer, Untermeyer and Marshall.

Q. You know him, of course?

A. Yes, sir.

Q. Who is Moses Weinman?

A. He is also member of that firm.

Q. Do you know him also?

A. Yes, sir.

545 Q. Who is J. C. Guggenheimer?

A. He is a lawyer in New York city.

Q. A member of the firm of Guggenheimer & Untermeyer?

A. No, sir.

Q. Any relation of Mr. Guggenheimer of the firm of Guggenheimer & Untermeyer?

A. I have no personal knowledge on that subject.

Q. Are you acquainted with him?

A. Yes, sir.

Q. Is he a member of the firm of Guggenheimer & Untermeyer?

A. I have said that he was not; he is a lawyer practicing by himself in New York.

Q. Where is his office with reference to the office of Guggenheimer & Untermeyer, in the city of New York?

A. It is not with them; I do not know where it is.

Q. Is it in the same building?

A. No, sir; not now. I do not know where it was then.

Q. Weren't the other members, the other directors of this first board, T. L. Herrmann, Harry C. Manheim and Samuel H. Guggenheimer?

A. I do not recollect. I said I do not recollect; I do not know as I should know unless I have the records before me.

Q. How was it you were able to make the statement you made in the answer as to who the first board of directors were?

A. I suppose I had some memorandum at the time as to the membership.

Q. That you got from the records?

A. Or I got it from Mr. Stein or some one else; I did not get it from the records; I never have had the records.

Q. Were any of this first board of directors, or such of them as you knew, mill men?

A. That is, the owners of these properties? Do you refer to these names?

Q. Yes.

A. No, I do not think they were.

Q. Do you know how long this first board of directors continued as a board?

A. No, I do not recollect; the record will show that, and I do not remember dates.

Q. This first board of directors, composed of Messrs. Beard, Heppenheimer, Taylor and the members of the firm of Guggenheimer and Untermeyer and others, was succeeded of the board composed of Philo D. Beard, Fred C. Trebein, E. Gilbert Church, J. B. Halladay, B. M. Frees, Richard T. Higgins, Emanuel Stein, Augustus T. Brown and William C. Heppenheimer, was it not?

A. Well, some of the men whose names you last mentioned had been on the original board and had never changed their positions; some of the others I suppose were elected to succeed parties who had resigned.

Q. Have you been able to find the options which—

A. I had no time to look for them; I have some other pressing matters in the office, and I haven't the time to even get my lunch.

Q. Of course you haven't time, then, to look for the checks?

A. Yes, I did; I had the checks where I could lay my hands on them; I have these with me (producing same).

Q. Will you allow me to look at them?

A. Oh, yes; you can look at them.

MR. GRESHAM: We would like to put these in evidence and offer them; and in order to save time they can go in evidence, the reporter may copy them and the originals returned to you.

THE WITNESS: I do not know as I care to let these go out of my possession.

MR. GRESHAM: If you do not care to have them go out of your possession, if you will have them copied and give us the copies we will put them in evidence as the originals.

THE WITNESS: I am willing to oblige you with anything that I have, but I do not know whether you are entitled to these or not.

MR. DUPEE: They are your vouchers in the disposition of a trust fund?

THE WITNESS: Yes, sir; that is it exactly.

MR. GRESHAM: I will ask you to produce the temporary bond certificates and bond certificate book, which you testified you had in your possession, at the same time you produce the options which you testified you had.

MR. GRESHAM: We offer in evidence the checks here produced by Mr. Wolf, drawn by Mr. Henry M. Wolf, as attorney-in-fact for Samuel Untermeyer, on the Northern Trust Company, and numbered from 1 to 83, respectively, and dated from January 27, 1893, to February 19, 1894, both inclusive, but excepting checks numbered 2, 52, 75 and 78, which do not appear to be with the checks, and agree that the same may be retained by Mr. Wolf, to be produced at any time for the purposes of the hearing in this cause; it being understood that if at any time it is necessary to make a complete record,

copies of the checks shall at all times be substituted for the originals for the purpose of making up the record, and that Mr. Wolf be at all times permitted to retain the originals. It is further understood, that if it is desired to use these original checks on the final hearing of the case, or on the hearing before the master as to what report, if any, he shall make to the court, Mr. Wolf will produce the checks before the master, or before the court, as the case may be, for such purpose.

Q. Now, Mr. Wolf, I will ask you if you will endeavor to ascertain and locate checks numbered 2, 52, 78 and 75?

A. I will; certainly.

Q. Mr. Wolf, please explain, if you know, why these checks were made payable to Mr. Stein?

A. Because the bonds all belonged to him and he assigned them.

Q. Did he get the bonds before the mills were paid for?

A. No, not before he—he got the bonds after his contract was made.

Q. Between him and the company?

A. After the contract between him and the company was made, and, as I explained this morning, the company wanted to look after the application of the purchase-money.

Q. Wanted him to look after the application of the purchase-money?

A. Well, it wanted to be sure that the purchase-money would be properly and expeditiously applied in accordance with the contract.

Q. Well, had Mr. Stein at that time caused the various mill-owners to convey their properties and plants to the Columbia Straw Paper Company?

A. Substantially, I should say, yes.

Q. Then how did the company know that the money would be applied by Mr. Stein, or rather paid by Mr. Stein to these various mill-owners?

A. The money was so applied, the company felt, I suppose, that it would be.

Q. Did it have any agreement with Mr. Stein that he would so apply the money?

A. I think the contract shows that, yes; it is on the same ground that if you are examining the title to property and there is a mortgage on the property, you will see that that mortgage is discharged before you will pay over the balance of the money to the vendor.

Q. I will ask you if it was not a fact that this money was given to Mr. Stein to enable him to make the payments on the properties so that he could convey or have the properties conveyed by a good title to the company?

548 A. The properties had already — conveyed, I think most of them, or a great many of them.

Q. Did the mill-owners convey their properties before they got the money or securities?

A. Yes, sir, that was the purpose of the meeting in December or

January to which you referred some time ago at which I said I was present, and at that meeting, which was held around the 15th of January, it was announced that twenty of the thirty-nine mills, I think it was twenty, were prepared to turn the properties over to Mr. Stein and Mr. Stein would have turned them over to the company before a dollar was paid out. It was announced at that meeting and that was the purpose of that meeting to see whether that could be done.

Q. And that was done or agreed upon at that meeting?

A. That was agreed upon and subsequently was done; every mill man turned over his property before he was paid.

Q. How long before the mill men got the money was it that they conveyed their properties to Mr. Stein and the company?

A. Oh, at least a month in some instances, and in some instances much more.

Q. Now what representations were made to the mill-owners that satisfied them it would be safe for them to convey their properties to Mr. Stein before they received their money?

A. Well, the most conservative of the mill men were satisfied to take that risk, and did so.

Q. Were any assurances given them that the money was put up by anybody, that the money had been put up or subscribed, or that parties had the money then?

A. I do not recall what assurances were made. The meeting was held and all the mill men present voted to turn in their properties.

Q. You were present at that meeting?

A. At that particular meeting I was present at that particular time.

Q. Was Mr. Samuel Untermeyer present at that particular meeting?

A. I do not think he was. I am pretty sure he was not in Chicago at that meeting.

Q. Was Mr. Beard?

A. Yes, Mr. Beard was.

Q. Were any papers exhibited at the meeting?

A. I do not recall that any papers were.

Q. Was Mr. Stein's contract shown to the members present—his contract with the company?

A. I say I do not recall that any were shown at that time.

549 Q. And copies of the resolutions of the board of directors and stockholders, the directors in New York and the stockholders at Hoboken, New Jersey, which were set out in the mortgage were copies of that resolution exhibited at that meeting?

A. They might have been, I do not remember.

Q. What is your impression?

A. I say I do not remember.

Q. You think not?

A. I say I do not remember, I am not clear whether it was talked of at that meeting or not. You see, Mr. Gresham, that meeting was held in one room in our office and I was very busily engaged on

other things; I was probably called out half a dozen times, and the mill men were practically there to determine themselves what they wanted to do.

Q. I am only asking you for your best impression or recollection if you have any.

A. I am explaining; and at this meeting they understood that there was some difficulty in closing this thing up all at once by each man getting his money and securities in any different manner than provided in the option agreement, and they also understood the mortgage that was to go on the property would cover all the mills and not one of them, or anything less than the thirty-nine that were spoken of at the meeting, and it seems, they had been investigating this matter, they were desirous of having the deal consummated, each one separately, and they voted in favor of sending their properties in first and getting their money afterwards. They were influenced to do that largely upon the responsibility of the men who were in favor of it.

Q. By those who were the financing parties?

A. No, I do not think Mr. Stein or Mr. Beard were present. I was in and out, I say I was present, but I do not know what was done, they simply got together for the purpose of fixing matters.

Q. Were any discussions had at that meeting as to what was to be done with the certificates of stock over and above the stock that would go to them and over and above the stock that would go as a gratuity with the bonds, say two hundred preferred and four hundred of common with each bond, would make in the aggregate two hundred thousand of preferred stock and four hundred thousand of common stock?

A. As I have explained to you, I never have heard the word "gratuity" used, except here.

Q. Whatever you please to call it, bonus, "velvet"?

A. No, I never heard the term "velvet" or any of those terms. It was understood a man would get so much with each bond.

550 Q. I understand you to say two hundred of preferred and four hundred of common?

A. My recollection is twenty per cent. of preferred and forty per cent. of common with one thousand-dollar bond.

Q. Then on a million bonds twenty per cent. would make two hundred thousand, wouldn't it?

A. Yes, sir.

Q. And of common stock forty per cent. on a million of bonds would make four hundred thousand of common stock, would it not?

A. Yes, sir.

Q. Now would the two hundred thousand of preferred and the four hundred thousand of common stock, together with the stock that the mill men were to get, would that consume the entire issue of stock of the corporation which was four million dollars, if you know?

A. You mean that assuming that your figures are correct, would it take all the stock?

Q. Yes, sir.

A. How much do you assume has gone to the mill-owners?

Q. I am not assuming anything that you know.

A. I know now there were some surplus stock; just what the amount is I have not in mind; at that time I do not really know whether I knew that or not; my impression is I did not. I did not know anything about the distribution of the stock.

Q. Then the mill-owners did not understand what was to be done with it, did they?

A. I do not know what they knew; I had nothing to do with that; my impression is that they did know, but whether they knew accurately or not, the figures, I do not know. I know that some of them did know.

Q. Now do I understand you to say that the mill-owners instead of the agreed price, who took the bonds, would have with each bond twenty shares of preferred and forty shares of common stock?

A. You ask me whether the mill-owners understood that?

Q. Yes, sir.

A. Every one of them, unquestionably.

Q. And they assented to that, and agreed to it at that meeting?

A. I do not say that, I do not say that that question came up at that meeting.

Q. But you do not know whether they knew what was to become of the balance of the preferred and common stock?

551 A. I say that my impression is that most of them knew, if not all of them, in fact I am morally certain that they all knew.

Q. Now how do you know Mr. Wolf that they knew what was to become of the balance of this stock when you did not know yourself?

A. I said that I did not know what the surplus was; I did not know the figures, but I knew in a general sort of way probably at that time, I knew these men who were doing this work and spending all this money, and spending this money for traveling expenses and counsel fees, and devoting a good deal of time, were not doing it for nothing; every mill man knew it; every mill man knew that the bonds were being sold, together with the stock in the way that I have stated, because I believe every mill man was asked to take bonds. Some of them did so, as I have testified. Mr. Brown, of Elmwood received ten thousand dollars cash, and took fifteen thousand of bonds. Mr. Carroll, Mr. Hooker also took bonds, and these things were all talked of, they were in the air, and every one knew them in a general way.

Q. Now, how much were the mill men to get of the preferred stock and of the common stock of the corporation?

A. You mean what were the exact figures?

Q. Yes; about.

Mr. DUPEE: That is shown by the options, isn't it?

A. That is shown by the options; yes, sir; shown by the record book; I do not recall the figures, Mr. Gresham.

Q. You have no recollection as to that?

A. I have no recollection ; this is a transaction over two years old, and I have not refreshed my recollection on the point.

Q. You cannot approximate it ?

A. No ; I cannot with any degree of accuracy.

Q. If you had the options, you could ?

A. I would have to go through them all.

Q. Then you could tell exactly ?

A. No ; probably I could not.

Q. You could not tell exactly ?

A. I could not tell what outside arrangements there were ; I could tell who were to get the money ; but if there was an additional agreement, I would have to find that out from Mr. Sherwood, or from some other source, in cases where Mr. Sherwood or some others made such outside agreements.

Q. Was Mr. Sherwood the only man who knew anything about these outside agreements ?

A. I do not know.

Q. Did Mr. Untermeyer ?

A. No.

552 Q. Mr. Beard ?

A. No ; I found out that there were outside considerations in certain instances.

Q. Did not Mr. Untermeyer or Mr. Beard know about these outside considerations ?

A. No ; they had nothing to do with them ; they were done by men who took the options, either done to enable them to take the options, or possibly done to have them take some of the securities. Mr. Untermeyer and Mr. Beard knew nothing about what the men engaged in taking the options were doing ; these men knew more about it than either Mr. Beard or Mr. Untermeyer.

Q. Well, would not they have to know about it before the stock was distributed to these parties ? You would go by the option unless there was something that was pretty conclusive that there was a side agreement, aside from the option ?

A. There was not anything to base that on.

Q. Well, then what was the guide by which you proceeded ?

A. So far as I was concerned, I simply followed the options, the expressions mentioned in the options ; that was as I was directed to do, make these checks for the cash payments in just that way.

Q. You mean checks for the cash payments according to the options ?

A. Yes, sir.

Q. So you would be able to determine just what the aggregate amount of stock was that the mill-owners received ?

A. Not from the checks.

Q. Well, from the options ?

A. Presumably yes, but if a mill man was to take, say twenty-five or fifty thousand of stock, it did not appear in the option, I would not know.

Q. Who would he get that from ?

A. He might have gotten it from Mr. Stein, or he might have

gotten it from the paper company; I did not know what outside relations there were.

Q. Were there agreements of that kind?

A. I think there were.

Q. You did not know?

A. I am not positive, but I have since learned that there were outside agreements; there was one case, for instance, where the company bought back twenty-four thousand of preferred and common stock that the company owns now, my recollection is, and that is why I say that. It appeared on an examination of the records of a certain corporation, that one of the officers of the company had sold the company the property of the company at a price
553 greater than the original price, had raised the price, and it was found by an examination of the corporate record made by myself, that that was unauthorized, and that stock was turned back to the company.

Q. What mill was that?

A. I prefer not to mention; at the time that was done, it was done by a man; the party who did it said he was not aware that these records appeared in that shape, and he had been acting under verbal instructions. The company had the stock, and that is why I say it may have bought a great deal more and there may be a security I know nothing about.

Q. In view of the hearsay remarks you have referred to, I will have to insist on your stating what mill plant that was.

Counsel for complainants advises the witness that he decline to answer.

The WITNESS: I decline to answer on the direction I have received; it appears in the shape of documents which the company has; these papers were all delivered to Mr. Beard.

Q. Who examined the titles to the various mill properties on behalf of the firm of Dupee, Judah, Willard & Wolf, who of your firm did the actual work of examining the titles?

A. Well, I think that Mr. Willard examined the most of them; Mr. Dupee, I think, examined one or two very difficult water titles, and I think Mr. Judah examined one; on an emergency we went outside and had some people in Iowa, or rather an Iowa lawyer examine some of the difficult, complicated water titles in Iowa, and Mr. Jameson of Indianapolis examined the title to the Lafayette mill, which was a very complicated one and had to be put through burnt record proceedings, and we had to submit various questions to legal counsel in the various States, when it came to various questions. Questions were submitted to Kittridge & Willoughby and J. M. Woolworth of Omaha, and a number of difficult questions were submitted to Dickinson & Stevenson, I think, of Detroit, well I consulted them verbally in regard to some questions arising in Michigan, and I think Mr. Flanders of Milwaukee, in regard to some matters up in Milwaukee.

Q. How long was your firm engaged in examining titles to these properties?

A. Oh, in examining the titles and cleaning up the details I should say from November to March, and in a great many cases we have had work to do, had to do work for months after that. Several of the titles were cured by bills to quiet titles. In certain cases we had to make examinations of the record, for instance, in one instance Mr. Willard went to Columbus to examine canal records in respect to water rights of mill men, and there were a great many difficulties of that kind arose.

554 Q. You said that fifty thousand dollars would have been a fair fee for the firm for this work?

A. I think the answer so states, yes, sir.

Q. Were you paid fifty thousand dollars?

A. No, sir, we ought to have been but we were not.

Q. What portion of the fifty thousand dollars were you paid?

A. When we undertook this work, we were paid a retainer of two thousand dollars in cash.

Q. By whom were you paid that?

A. My arrangement was made with Samuel Untermeyer of New York, for whom we acted as local counsel purely, and it was understood that none—

Mr. DUPEE: Excuse me; but in that connection, Mr. Untermeyer was counsel himself.

The WITNESS: Yes, sir, he was counsel who represented the eastern interests whatever they were, and he was the counsel whom I looked to for instructions on all matters, that organized the company, that drew the mortgage and attended to the various details respecting the organization of the company; it was agreed that we should have eight thousand dollars more in cash, that our fee should be ten thousand dollars, but it was distinctly understood we were not to have anything to do with the abstracts or the conveyancing, we were asked to get—

Mr. GRESHAM:

Q. I was only asking you by whom you were paid?

A. I want to go into that and show you—

Q. You may answer me, I am asking you how much of this fifty thousand you got?

A. I am telling you how the fee came to be modified.

Mr. DUPEE: You can answer the question.

A. When I made application to two or three title companies to take up this work, two I know—

Mr. GRESHAM:

Q. Well, you can answer the question and then make your explanation.

A. —they refused. We subsequently agreed, in lieu of the eight thousand dollars in cash we were to receive, the consideration of eight thousand dollars in bonds and sixteen hundred dollars in preferred stock and three hundred and thirty-two shares of common stock.

Mr. DUPEE: That was for what?

Mr. GRESHAM:

Q. What was the face then of your common stock?

A. Thirty-three thousand two hundred dollars.

Q. What was the face of the preferred stock?

A. Sixteen hundred dollars.

555 Q. And how many bonds?

A. Eight.

Q. That made forty-two.

A. Forty-two thousand eight hundred dollars.

Q. You received two thousand dollars in cash?

A. As a retainer; the total amount of cash and securities was forty-four thousand eight hundred dollars.

Mr. DUPEE: Face?

The WITNESS: Yes, on the face value, par value.

Adjourned to 11 a. m., Monday, January 6th, A. D. 1896.

THE NORTHERN TRUST COMPANY ET AL.	} In Chancery.
<i>vs.</i>	
COLUMBIA STRAW PAPER COMPANY ET AL.	

MONDAY, January 6, A. D. 1896.

Continuation at 11 o'clock in the forenoon pursuant to adjournment.

Present: Mr. Dupee, Mr. Gresham.

HENRY M. WOLF.

Direct examination (continued) by Mr. GRESHAM:

Q. Do you know what compensation was paid Mr. Jameson for examining the title to the Lafayette mill?

A. I do not know.

Q. How was he paid?

A. Cash.

Q. By whom?

A. I do not recollect. I know that the bill was paid.

Q. Have you any recollection as to what the amount was?

A. I do not recollect at this time, a few hundred dollars, my impression is.

Q. Well, by whom were you compensated for paying Mr. Jameson?

A. Some two or three thousand dollars were given to me in checks and cash to make the necessary disbursements. That covered the disbursements to Kittridge & Willoughby of Cincinnati, and J. M. Wolford of Omaha, covered all the disbursements made.

556 In certain instances the costs were in doubt, on which the attorneys for the mill men and I could not agree, we did agree to submit matters to some attorney—

Q. Local attorney?

A. In the State where the property about to be purchased was situated, and generally the mill men paid part of the necessary fee,

and the balance was paid by ourselves. In the case of Mr. Jameson, I think two hundred and fifty dollars was paid at one time in connection with the title, and by Mr. Robertson direct, but we also paid him quite a sum, what it is I do not recollect.

Q. Then two thousand dollars covered—

A. I said a few thousand dollars, I don't know just what the charges were, my impression is, oh, that they were four or five thousand dollars.

Q. So whatever it was, a few, or four or five thousand dollars covered the amount paid to Kittridge & Willoughby of Cincinnati, and J. M. Wolworth of Omaha, and Dickinson & Stevenson of Detroit, and Mr. Flanders of Milwaukee?

A. I do not recollect that Mr. Flanders rendered a bill in connection with that matter. We were engaged in other matters with him at that time, and he probably did it as a matter of courtesy.

Q. Well, then, a few thousand, or four or five thousand, whatever it was, covered the aggregate fees of these attorneys selected on local questions?

A. I have not stated that all of that money went to the attorneys; a great deal of it went for abstracts, which were made by mill men, and which there was a question about. It was not by any means an easy task to get things the way we were instructed to get them. Mr. Sherwood was aware of that, because he attended to matters for Mr. Clark, of Logansport, and my impression is, to other matters; but not as correspondent, acting for Dupee, Judah & Willard, but as attorney of the mill men.

Q. Well, the matter of clearing up the titles, then, getting abstracts and opinions of local attorneys, involved an expense of four or five thousand dollars?

A. No; I have not testified to that; I did not say it did; but whatever it was, the bills were paid.

Q. Can you form any estimate of what it costs to get the abstracts and opinions of local attorneys, and clear up the titles, so far as that part of the business was done?

A. I do not recall at this moment, and I do not know how much other people paid. For example, Mr. Williams, of Streator, paid his own attorneys for quieting the title to the Streator mill; 557 Mr. Clark, of Marseilles, paid his attorneys for that, and others paid, and we had disbursements also, so what was paid altogether I have no means of judging. You must understand, Mr. Gresham, that there were thirty-nine mills, and also another mill property, making forty properties, and in addition to that there were sometimes five, six and seven distinct pieces connected with a mill, each with a different description, a different chain of title and a different history, and there were no means of telling just what had to be paid out.

Q. Well, so far as the straightening of the titles came under your immediate notice and supervision, and the amounts paid therefor, including fees to local attorneys for opinions, you think that all involved a cost of four or five thousand dollars?

A. I have not testified that; I do not know.

Q. I am asking you ?

A. I have testified as fully as I can.

Q. I am asking you this ?

A. That is the fact, what I have already testified to, four or five thousand dollars would certainly cover it.

Mr. GRESHAM :

Q. That is all ?

The WITNESS : I do not want to be understood that that amount was actually paid by myself or by my direction.

Q. Well now, where were the abstracts and conveyances and muniments of title deposited before the mill men were paid their cash payments ?

A. A great many of them were deposited with the Northern Trust Company ; some of the mill men brought the abstracts to Mr. Stein without depositing them at the Northern Trust Company, and Mr. Stein brought them in to me ; some of the mill men deposited them there.

Q. The options provided that the abstracts and deeds for the property should be deposited with the Northern Trust Company, did they not ?

A. Yes, sir.

Q. And on the payment, the cash payment which was called for by the option, to deliver the stock, then the Northern Trust Company would turn them over to the Columbia Straw Paper Company, is not that the way your transaction was done ?

A. Not altogether. If you mean by turning over, to deliver in a legal sense.

Q. Yes.

A. That is the way it was done, but the fact was the Northern Trust Company probably was instructed that it might deliver out the abstracts for examination upon its being given a receipt for them ; and I think that where papers were deposited with the

Northern Trust Company that they were borrowed, examined, 558 opinions given, and the papers returned to the trust company and they were kept there until the deal was closed in each instance.

Q. And until the mill men got their securities and their cash payments ?

A. Yes, sir.

Q. Now how was it determined, how much stock in each particular case the mill men got ?

A. Oh, that was determined long before I ever held any of the options, or rather long before I ever saw an option, that is a matter of contract of which I knew nothing, had nothing to do with it.

Q. I understand that. Who delivered the stock to the mill-owners ?

A. Mr. Stein either delivered it personally or ordered it to be done.

Q. Well, stock was issued from your office by Mr. Hood and the other employés of the Columbia Straw Paper Company ?

A. I think that a good many of the certificates were filled out in

our office. My impression is that Mr. Sherwood filled out some of them; that is a recollection only. I know Mr. Sherwood was around a good deal and offered to give assistance in connection with the matter.

Q. How was it determined how much stock should go to a particular mill-owner?

A. Simply an order of Mr. Stein, I presume he knew the persons and the prices.

Q. You had the options there in your office at the time?

A. I am not sure that I had them at that particular time. I did have them at the time of the final payments, when they were made.

Q. That is what I mean.

A. But the stock had probably been split up in accordance with the agreement, various agreements, before the time of the final payment.

Q. When you would draw a check on the Northern Trust Company to Mr. Stein's order, wouldn't you see whether the mill-owner would get the amount of stock called for in the option at the same time, wasn't it all one transaction?

A. No, not always.

Q. Was it in any case?

A. It was in some cases, yes; in a good many cases it was, and in a good many cases it was not. You see it was this way, these titles were not in first-class shape at the time that the properties were taken over and Mr. Stein would make some arrangement whereby a man would be given a part of the cash purchase price, and the balance he held until everything was in proper condition, and I was simply furnished with instructions, generally verbal.

Q. By whom?

A. By Mr. Stein, as to what to do.

Q. Did not you have any discretion in the matter, inasmuch as you were checking out for Mr. Untermyer, to satisfy yourself that Mr. Stein was proceeding according to the options, before you would sign the checks?

A. I had the fullest confidence in Mr. Stein's ability to take care of himself in matters of that kind, and knew that he would; I knew he could take care of himself.

Q. You were to take care of Mr. Untermyer?

A. I was to see that no one was overpaid.

Q. Did you see that the mill men did not receive more stock than they were entitled to?

A. I saw that they received what the options called for. It was in about this way, when a man had turned over his abstracts, deeds, bill of sale, leases and his other agreements, if there were any in connection with the matter, and then the check would be drawn either by Mr. Hood or some one else, and the securities to which he would be entitled would be received, and if these things were properly turned over to Mr. Stein or Mr. Hood, the details were too numerous for any one man to attend to. I am explaining just how it was done as a general thing.

Q. The general supervision was in your office?

A. Oh, yes; I presume that is so.

Q. And you were acting as the representative of Mr. Untermeyer?

A. Simply for the purpose of drawing these checks in that way. I had no general power in any way, never had had.

Q. You were careful to see that everything was in accordance with the option before you would draw a check on another man's money?

A. Of course, that is what I was trying to do.

Q. Have you been able to get the options?

A. I have not had time to go through the vault where these papers were, but I hope to be able to today. I have been very busy and have not had time.

Q. Have you been able to locate the temporary bond certificate book?

A. Yes, sir; I have it here.

Q. Will you allow me to look at it? (handing book to Mr. Gresham.) That is a power of attorney, in the first place; it has nothing to do with the certificate; simply put in there for the purpose of preserving it. It should be attached to the certificate issued to Henry S. Carroll, if you will allow me.

Q. The first certificate calls for a schedule giving the names of individuals and firms to whom Mr. Stein, the holder of the first certificate, desired certificates to be issued in lieu of that. Do you know where that list is?

A. Presumably with the company; I don't know where it is.

Q. It is not here in place?

A. One of the officers or employes of the company made out the certificate, and it was his handwriting. I should judge.

Mr. DUPEE: What book is this that you have just produced?

The WITNESS: The temporary bond certificate book of the Columbia Straw Paper Company, which I have referred to in my testimony heretofore given.

Mr. GRESHAM: Where were these certificates issued from, Mr. Wolf? Well, say the first one, numbered 1, to Mr. Stein, for the one thousand bonds, dated January 27, 1893?

A. Are you asking for my knowledge on the subject?

Q. Yes.

A. I do not know.

Q. When did the book come into your possession?

A. The book came into our possession from the printer.

Q. And has remained in your possession ever since?

A. No, sir; it has been out of my possession. As I look over the handwriting I see that it is in the handwriting of some one who is not connected with our office and never was, and they might have been issued from the office of the Columbia Straw Paper Company at the Chamber of Commerce building at that time, the company had been doing business for more than a month.

Q. Where was the printing of this done?

A. Here in Chicago.

Q. The printer delivered this, the certificate book, to you or your firm, and you did what with it, then, if you recollect?

A. This form was not prepared by us or in my office by any member of the firm of Dupee, Judah & Willard. I do not recollect; I personally did not look after that book, as I testified, and I could not to my own knowledge say where it was issued.

Q. Have you any knowledge or information of the whereabouts of the book, say the 28th and 29th of January, 1893, when it appears the certificates were issued?

A. On the 28th day of January this book was in the Richelieu hotel, Chicago.

Q. Can you say in whose possession it was?

A. I think in the possession of Samuel Untermeyer.

561 Mr. GRESHAM: Now, we ask that this book be put in evidence as tending to show who were the original subscribers to the fund which was to finance this corporation, and as tending to prove to whom the bonds were issued and to be issued; as tending to prove who the promoters—in other words—I do not use the word “promoters” in an objectionable sense—originally were, the promoters or parties getting bonds, and tending to prove who are the present holders of the bonds; to be followed up by other testimony.

Mr. DUPEE: Mr. Wolf, to whom does that book belong?

The WITNESS: It is subject to the claim that Dupee, Judah & Willard has for attorneys' fees against the Columbia Straw Paper Company; I suppose it belongs to the Columbia Straw Paper Company.

Mr. DUPEE: The firm you speak of has such a claim?

The WITNESS: Yes, sir.

Mr. DUPEE: Of about how much?

The WITNESS: Oh, I do not recollect, but between one and two thousand dollars.

Mr. DUPEE: And they claim such a lien on this and other books?

The WITNESS: Yes, sir, on this and other papers it may have; I do not think there are any other books; I do not recall any, but everything in the way of documents that the firm has it claims a lien upon; yes, sir.

Mr. DUPEE: We do not want to part with our lien unless we are compensated. The effect of taking this book from our possession and putting it in evidence would be to divest us of our securities, upon which we have a lien, for what is due us from the Columbia Straw Paper Company, and we do not wish to part with it unless our claim is discharged.

Mr. GRESHAM: There is nothing that appears from the certificates that much of the writing and the receipts for the certificates are in the handwriting of Samuel Untermeyer—

Mr. DUPEE: Counsel for complainants objects to the statements of counsel being offered or put in as testimony.

Mr. GRESHAM: I will ask you the question here, Mr. Wolf (showing book)—

Mr. DUPEE: Wait a moment—go on with your question.

Q. (Continuing:) Are you acquainted with the handwriting of Mr. Samuel Untermeyer?

A. Yes.

Q. I will ask you if on the stub to which the first certificate is attached, for the one thousand bonds delivered to Emanuel Stein, any of the writing on the stub is in the handwriting of Samuel Untermeyer?

A. My best judgment is that some of it is in the handwriting of Mr. Untermeyer—referring to the stub, are you not?

Q. Yes. I will ask you if any of the writing on the first certificate, the one which was delivered to Mr. Stein for the one thousand bonds, is in the handwriting of Mr. Samuel Untermeyer?

A. I would like to qualify that answer; it looks like Mr. Untermeyer's writing, both on the stub and the face of the certificate, and yet I am not absolutely certain that it is; it looks somewhat like his handwriting.

Q. I will ask you if any of the writing on the back of the first temporary certificate which was issued to Mr. Stein is in the handwriting of Mr. Untermeyer?

A. I should want to make the same answer in respect to that.

Mr. GRESHAM: That is all.

Testimony of J. B. Sherwood.

JOHN B. SHERWOOD (recalled) for further examination on behalf of certain defendants by Mr. Gresham:

Q. Mr. Sherwood, are you acquainted—

(Counsel for complainants objects to the interrogatory on the ground that by stipulation of counsel the time for the examination of all other witnesses before the master, excepting the conclusion of Mr. Wolf's examination, has expired.)

Mr. GRESHAM: By that stipulation the defendants were given the time within which the hearing is now progressing to get in documents that they might be able to get and introduce them in evidence, and I desire to examine Mr. Sherwood simply for the purpose of identifying Mr. Untermeyer's handwriting.

The MASTER: Referring to the stipulation, it seems to me, Mr. Gresham, that that is limited.

Mr. GRESHAM: I insist on my motion that the temporary bond certificate book be now put in evidence.

Mr. DUPEE: I think I have made myself clear that our possession of this book is in a sense a lien on the property which we do not wish to part with unless our claim is discharged.

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Testimony of H. M. Wolf.

HENRY M. WOLF.

Direct examination (resumed) by Mr. GRESHAM :

Q. Mr. Wolf, these services which you claim the Columbia Straw Paper Company has never paid you for, when were these services performed?

A. Between the 1st day of February, 1893, and, say, two years thereafter; less than that, possibly, the time we were acting as attorneys for the company.

Q. When did you get possession of this temporary bond certificate book?

A. Some time during that period.

Q. Didn't you have possession of this temporary bond certificate book prior to February, 1893?

A. I do not know; it might have been in our office and it might not. I told you where it was on one day because I recollect it; my impression is it may have been there longer; I don't know that this book came into the office in this shape. I testified on Saturday that it had been out of the office.

Q. Has it ever been out of your office since February 1, 1893?

A. I do not recall; I cannot say that it had, but I do not remember.

Q. In whose possession was it while out?

A. It was not in my possession at all; I think I have made that very apparent by my statement.

Q. When did it occur to you to make claim?

A. Oh, I made a claim over a year ago with respect to other papers.

Q. In what way did you make this claim?

A. I simply said that there were large amounts due us, and I did not feel that we ought to be accommodating every one and not getting any recognition ourselves.

Q. Who did you make that statement to?

A. Mr. Stein; and until they saw fit to pay our bill, I would not deliver up certain papers that they asked for at that time; I made that statement to Mr. Stein.

Q. This temporary bond certificate book was in controversy therefore, between you and Mr. Stein?

A. No, sir.

Q. Did you give Mr. Stein to understand that this was one of the papers or books?

564 A. The question did not arise with respect to this particular book; the question was general.

Q. The question was with respect to the possession of papers that were in the possession of Dupee, Judah & Willard?

A. Yes, sir; I told Mr. Stein that so far as he was personally concerned, our relations had been and were very pleasant, but so long as the directors refused to permit him to make payment to us, I

thought that I had no need to accommodate the directors by doing whatever they asked; that conversation took place considerably more than a year ago, just when I do not recollect; that is, it was while we were still acting as attorneys for the company.

Q. What do you consider to be the value of this temporary bond certificate book?

A. I have never placed any particular value upon this book, I have simply taken everything together. The answer that I make will apply to all of them, to everything we might have.

Q. What do you consider to be the value of the papers to them, to the Columbia Straw Paper Company?

A. I cannot say any more than you can say what the value would be to you of files in your possession.

Q. Well, you certainly must put some estimated value on them or you would not hold them?

A. So far as our particular claim is concerned, that is all we have a lien for at the present time.

Q. Your claim is three thousand dollars?

A. I say between one and two thousand dollars. I do not know just what the figures are.

Recess until 2.00 p. m.

2 P. M. MONDAY, January 6, 1896.

Continuation after recess.

Present: Mr. Dupee, Mr. Gra-ham.

Counsel for complainants, for the sake of saving time, withdraws his objection to the presentation in evidence of the temporary bond certificate book, and consents that it may go in subject to objection; counsel desires that if the master is through with the book it shall be in the custody of Mr. Wolf until the hearing; counsel also reserves the right, upon the final hearing of the case, or at any time before, to object to the use of the book in evidence, and the right to move to exclude the same, and does not in any way waive his right to a lien upon the book; this stipulation is not to conclude complainants from the right to object to the introduction of any other book or document which may be offered.

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Testimony of H. M. Wolf.

HENRY M. WOLF.

Direct examination (cont'd) by MR. GRESHAM:

Q. I may have asked you this question this morning—What became of the schedule, if you know, which was attached to the certificate which was issued to Mr. Stein for the one thousand of bonds, when he returned it with instructions to issue certificates in lieu thereof to various parties?

A. You asked me that question and I answered that it was presumably in the custody of the company; I do not know where it is and I do not know as I ever saw the schedule referred to.

Q. Do you know whether the parties to whom the certificates

were issued, as appears by the certificates, in lieu of the one certificate to Mr. Stein, whether they are the parties who are named in the schedule which was attached to the certificate which Mr. Stein returned with instructions to issue?

A. I do not of my own knowledge, although all these certificates were made out in the handwriting, as I have explained, of an employé of the Columbia Straw Paper Company; I do not think I ever saw any of the certificates excepting those of possibly certain ones.

Q. I believe you stated this temporary bond certificate book was in the Richelieu hotel in Chicago on the 28th day of January, 1893?

A. I know I saw it there; yes, sir.

Q. Was that in the presence of Samuel Untermeyer?

A. I saw the book there, I do not know that Samuel Untermeyer had the book at that time.

Q. Was he present at that time?

A. He was stopping at the Richelieu hotel.

Q. Was the book in Mr. Untermeyer's room at the time you saw it in the Richelieu hotel?

A. I do not remember whether it was his room or not.

Q. Well, do you know what was the purpose of having the book in the hotel at that time?

A. Yes, it was taken over to him by some one connected with the company for the purpose of having him receipt for all of his certificates.

Q. And these receipts which appear to be signed by Mr. Untermeyer on the 28th of January, 1893, as appears on the stubs to which the canceled certificates were attached, were signed by Mr. Untermeyer there in the hotel on that day?

566 A. I did not see him do so, I suppose that he did, but I had an appointment with him on that day and saw the book there in a room on that day.

Q. Was Mr. Untermeyer in Chicago on that day on business connected with the matter of organizing, and distributing the certificates of the Columbia Straw Paper Company?

A. No, sir; not so far as distributing the certificates is concerned, that I do not know; he was here on business generally and looked after some of this business I presume, that is some business connected with the Columbia Straw Paper Company while he was here.

Q. Now do you know whether there were temporary stock certificates about the time these temporary bond certificates were issued?

A. As to that I am not positive, there were temporary stock certificates issued, but whether it was at that time, I believe I have already testified that I do not know.

Q. You do not know where this temporary certificate No. 1 was issued to Mr. Stein, do you?

A. You mean where it was written?

Q. Yes.

A. I testified that I did not.

Q. Do you know whether it was issued here in Chicago, or not?

A. Oh, I presume it was issued here in Chicago.

Q. Well, that is what I mean.

A. I thought you referred to just the particular place, and the room, and all that.

Q. No. Well, of course according to the plan by which the certificates were to be issued to Mr. Stein, then the stock certificates were also issued to Mr. Stein here in Chicago? On or about the date that this first bond certificate was issued to him, were they not?

A. I testified on that point, Mr. Gresham, and I cannot say any more than I have.

Q. I am asking you now, in an argumentative sort of way, you understand.

A. Well, I am trying to give you the very best recollection I have on the subject, and that I have done.

Q. Well, this may refresh your recollection, may it not?

A. It may refresh my recollection, but I have already testified to the very best of my recollection.

Q. But that was not with the stock certificate book before you?

A. I have not the stock certificate book before me now.

567 Q. I mean the bond certificate book before you.

A. If I were to see the stock certificate book I might be able to say by looking at that, but I have seen thousands of stock certificate books since that time, and I am not charging my memory with stock and bond certificate books. I had so little to do with the detail of issuing the stock, excepting to myself, if there was any issued, that I have no recollection as to what others did.

The WITNESS: I want to say that all of these certificates, as appears from an examination, were issued between January 27th and the 29th day of April, 1893, and the book was closed on the 29th day of April, 1893. Prior to that time the bonds has been executed and certified to and delivered out, and the bonds were then in circulation.

Mr. DUPEE: Had they been paid for prior to that time?

The WITNESS: Yes, sir, all the bonds had been paid for prior to that time; there might have been a few that were not actually paid for prior to that time, prior to the 29th day of April, but such bonds as were not paid for prior to the 29th day of April were certainly paid for within a short time thereafter, for everything was closed around the 1st day of May, 1893.

Mr. GRESHAM:

Q. But most of the bonds were issued—most of the certificates were issued on the 27th and 28th of January, 1893, were they not, as appears by this book?

A. I don't know, I should have to examine the dates; my impression is that some were dated the 28th day of January, although they were not issued until some time subsequent to that date. Some of them were issued around after the first day of May;

this one, for instance, is dated the 27th of January, 1893, but as a matter of fact was not issued till the 6th day of May, 1893.

Mr. DUPEE: That is what number?

The WITNESS: No. 56; but all the bonds were paid for around that time.

Mr. GRESHAM:

Q. What time?

A. Between the latter part of January and the early part of May, or the last of April, I have not the exact dates in mind.

Q. Were not these bonds as a matter of fact paid for by a deposit of the money in the Northern Trust Company on the 17th day of January, 1893?

A. On the 17th of January?

Q. Yes.

A. I do not think there was any deposit opened in the name of Samuel Untermeyer on the 17th day of January, 1893.

Q. What was the date then?

A. It was subsequent to that, around the 25th day of January; I do not remember the exact date that Mr. Untermeyer opened his account with the Northern Trust Company.

Q. 1893?

A. 1893.

Q. Was not that the fund that paid for the bonds?

A. Some of it, probably, yes, sir; but the bonds were sold by Mr. Stein to raise funds.

Q. What portion of it?

A. Well, I do not recall, I have not the figures in mind; some were paid for then, and some were sold later and paid for later, sold by Mr. Stein.

Q. Some of these certificates by the stubs show that the certificates were issued to you to enable Noble B. Judah, who is your partner, as I understand you, and to Charles A. Dupee, who is your partner, on the 28th day of January, 1893?

A. I do not think that is a correct statement of the facts as appears by the stub.

(Question withdrawn.)

Mr. GRESHAM: Well, this may go in evidence, if the master please, upon the statement of counsel for complainants, under the statement or stipulation of counsel for complainants.

Mr. DUPEE: Suppose you add, that it may be retained by the witness, except when needed by the master or by the court.

Mr. GRESHAM:

Q. Well, Mr. Wolf, was not the fund in the Northern Trust Company at the time you speak of, at the time this certificate was issued to Mr. Stein?

Mr. DUPEE: What fund do you speak of, Mr. Gresham?

Mr. GRESHAM: The fund of about eight hundred thousand dollars he testified to on Saturday.

A. It was not all in the bank at any one time, at no one time was there that amount, but the total deposits aggregated more than eight hundred thousand dollars.

Q. How much more?

A. I do not recall the exact figures.

Q. Do you know how much was in the Northern Trust Company on the 25th day of January, 1893?

A. No, I do not recall just what the figures were, but the bonds were sold to raise the money, the certificates being delivered out as the money came in, and the money was paid to Mr. Stein; every check that was introduced here in evidence shows that; all the money went to Mr. Stein.

Q. Who sold the bonds?

A. Mr. Stein. I was saying, when you interrupted me with the last question, that a great many of the mill men took bonds in place of cash, and that of course would not appear in any aggregate
569 of checks that were made payable to Mr. Stein that Mr. Stein paid out; Mr. Stein sold all the bonds; they all belonged to him, as the temporary bond certificate shows.

Q. Had Mr. Stein arranged to sell the bonds prior to the temporary bond certificate being issued to him?

A. That I cannot say, he had no doubt arranged to sell some of them, just what number I cannot say.

Q. Do you know how many he arranged to sell to Mr. Samuel Untermeyer?

A. No.

Q. Have you any idea how many Mr. Untermeyer indicated he would take?

A. I could guess from general knowledge on the subject, but not from any accurate knowledge.

Q. Well, from your general knowledge?

A. I think Mr. Untermeyer bought in the neighborhood of one hundred thousand dollars himself.

Q. Do you know how many he undertook to place?

A. I do not know as he undertook to place any of them.

Q. How long did you know this before Mr. Stein received the temporary certificate?

A. I had nothing whatever to do with the issuance of the temporary certificate, so I do not know as to that.

Q. You know that it was issued?

A. I can see from the face of the certificate.

Q. Well, how long prior to that time, the 27th day of January, did you know that Mr. Untermeyer would probably take a hundred thousand of bonds?

A. That is a guess; I don't know; the statement, as I said, was made purely from general information.

Q. Did you have any knowledge prior to the time this temporary certificate was issued to Mr. Stein that Mr. Beard proposed taking any of the bonds?

(Objected to by counsel for complainants as immaterial.)

A. Yes, sir.

Q. Have you any idea of how many bonds Mr. Beard proposed taking?

A. Individually?

Q. Individually or in connection with his friends.

A. I knew nothing whatever about Mr. Beard's friends, and I did not know what Mr. Beard's connection with any one else was; prior to the 27th day of January and some time subsequent to the organization of the company in December, 1892.

Q. Now, what amount of bonds, if any, did you understand he was going to take?

570 A. It was purely hearsay.

(Counsel for complainants cautions the witness to state only what he knows himself.)

A. (Continuing:) I do not recall the exact figures more than a hundred thousand dollars, possibly more, but I do not remember the figures.

Q. Now, Mr. Wolf, was the temporary stock certificate book here in Chicago on the 27th day of January, 1893, the 27th and 28th days of January, 1893?

A. I cannot recall whether it was or whether it was not; I do know that I do not remember seeing it then, and yet it might have been.

Q. It was not in your office then?

A. I do not know; I have nothing to do with these particular books, and it may have been there then without my knowing about it, and it might have been here and I had forgotten about it.

Q. At that time was Mr. Hood working for the Columbia Straw Paper Company?

A. No, sir; it was only after the pressure of business at the office of the Columbia Straw Paper Company became so great that they asked Mr. Hood to take charge of the books, of these particular books and possibly other matters in connection with the organization, and they paid Mr. Hood a salary direct, and this work was done by Mr. Hood at night, and generally at a time when it would not interfere with his other office duties, and that is the way, if it was in the office around that time, I do not recollect it.

Q. Do you know how much stock was issued to Mr. Untermeyer at this time?

A. No, sir; at no time.

Q. Now, how much stock was issued to you in your individual capacity and as trustee?

A. In my individual capacity, stock that I owned, I presume that I had in the neighborhood of one hundred shares, altogether; it might have been.

Q. Preferred or common?

A. That is common, I did not have but a little of the preferred.

Q. You are speaking of Henry M. Wolf individually?

A. Yes, and part of that stock came with bonds, and part of that stock came in consideration of services.

Mr. DUPEE: As you have testified?

The WITNESS: As I have testified, yes, sir; and I may have had around ten shares of the preferred stock possibly, that is, I think that is all, I do not believe I ever had over ten shares of preferred stock.

As trustee for the Columbia Straw Paper Company, Philo
571 D. Beard, Emanuel Stein, John B. Halladay, Frederick C. Trebein, Richard T. Higgins, the Farmers' and Merchants' bank, Elbridge G. Church, Samuel Untermeyer, Isaac Untermeyer, Randolph Guggenheimer—I may have omitted some of them—I think not though—I held eleven hundred, say eleven hundred and ten shares (referring to document). I held eleven hundred and ten shares of preferred stock and two thousand two hundred and twenty shares of the common stock of the Columbia Straw Paper Company; some of that was subsequently transferred to and lodged with the Savings and Trust Company of Cleveland, by me acting under instructions of the parties for whom I was the naked trustee. I was "naked" trustee, because I never had any interest in the stock, in that particular stock, or in any of the preferred stock or common stock, pay any money as said trustee, nor did any parties excepting those whose names I last mentioned.

Q. Your fee, that is, the fee of the firm of Dupee, Judah, Willard & Wolf for services in connection with the organization of the company was—that was paid?

A. Yes, sir.

Q. Either in money or in what was accepted as payment in full?

A. We thought it was as good as money, if we hadn't we would not have taken it.

Q. And that was not paid by the company but by Mr. Untermeyer and these gentlemen who were associated in directing it?

A. The company paid it in the first instance to Mr. Stein and these other gentlemen and Mr. Stein paid it to us. I regarded the stock at the time as fully paid and issued in good faith, and I do still.

Q. Well, do you know what was paid Mr. Halladay for his services in taking options?

A. No, sir.

Q. Do you know what was paid Mr. Church?

A. No, sir.

Q. Do you know what was paid Mr. Trebein?

A. No, sir.

Q. Or what was paid Mr. Stein?

A. No, sir. The reason I do not have any knowledge of these points is I had nothing to do with those gentlemen at the time I was never present at any conference at which these matters were discussed, I had nothing to do with them.

Q. Did you ever know of any contract or agreement whereby Mr. Beard, Mr. U-termeyer and others, had agreed prior to the formation of the company to finance it?

A. No, sir.

572 Q. If there was such an agreement you know nothing about it?

A. If there was such an agreement I never saw it.

Q. And you are not a party to any such agreement?

A. Neither I personally nor any member of my firm, if they knew anything of it they would know it through me and I never saw it and have no knowledge of it.

Q. Did you understand that Mr. Stein was acting for himself in this matter rather than as an agent or medium, whereby Mr. Beard and Mr. Untermeyer and the gentlemen who were putting up the money were proceeding.

(Question objected to by counsel for complainants as calling for the conclusions of the witness and not for the facts upon which a conclusion should be based.)

A. I certainly understood that Mr. Stein was acting for himself. We was interested with him, if any one, and what the extent of their interests was, I was not advised.

Q. Then you would be surprised with Mr. Stein's statement here, that he was merely the medium through which Mr. Beard, Mr. Untermeyer and others were acting.

(Objected to by counsel for complainants as immaterial.)

A. I have not heard Mr. Stein's testimony.

Q. I am assuming that he so testified. Assuming that Mr. Stein testified here that he was the "conduit" through which Messrs. Untermeyer, Beard and others who financed the corporation proceeded in its organization, you would be surprised at such a statement from him.

(Objected to by counsel for complainants as being an incorrect assumption and as wholly irrelevant. Objection sustained. Exception by defendants' counsel.)

A. I should think it would be irrelevant what state of mind of the witness was under that assumption.

Q. Do you know what consideration there was for the transfer of the options from Mr. Stein to Mr. Ramsdell?

A. No, sir; I never heard of it, till long after it, and do not know anything about it.

Q. Do you know what the consideration for the transfer by Ramsdell of his interest in the options to Beard was?

A. I never knew that Ramsdell had transferred his interest to Beard.

Q. Do you know what the consideration was for the transfer by Ramsdell of his interest in the options to Stein?

A. I think I have answered that already by saying I did not.

Q. Do you know when and where Mr. Beard assigned his interest in the options to Mr. Stein?

573 A. I do not, I do not know that I ever knew; my impression is that all these papers were drawn in New York.

Q. Have you the options?

A. I have.

Q. Will you allow me to look at them?

A. (Handing package to Mr. Gresham.) I find a memorandum that the options of the Knightstown mill were in the files of a certain case which is in the hands of Herrick, Allen & Boyeson, as attorneys for the Columbia Straw Paper Company, and I do not know whether the option in question is in their hands or not. These are all that I have been able to find.

Q. How many are here?

A. I have not counted them, if you will pass them over here I will.

Q. (After examining package of options.) Rock Falls; please look at the option and state what amount of common stock and what amount of preferred stock the option calls to be paid to the owners of the Rock Falls mill?

(Counsel for complainants objects to this and all similar testimony as irrelevant.)

Mr. GRESHAM: I will state the reason I do this is to obviate the trouble of putting the entire option in evidence.

A. Three hundred thousand dollars was the total consideration, of which seventy-five thousand was in cash, seventy-five thousand in preferred stock, and one hundred and fifty thousand dollars in common stock.

Q. Lyndon?

A. I think Lyndon was also included in that purchase price.

Q. Sterling?

A. Twenty-eight thousand dollars.

Q. How much of that was paid in preferred, and how much in common stock?

A. Seven thousand dollars in preferred stock, fourteen thousand dollars in common stock, and seven thousand dollars in cash.

Q. What is the consideration for the transfer of the Elmwood mill?

A. Forty thousand dollars payable ten thousand dollars in cash, ten thousand dollars in preferred stock, and twenty thousand in common stock.

Q. What was the consideration agreed to in the option for the transfer of the mill at Pontiac?

A. Forty-eight thousand dollars, twelve thousand dollars thereof in cash, twelve thousand dollars thereof in preferred stock, and twenty-four thousand dollars in common stock.

574 Q. Dayton?

A. Fifteen thousand dollars, five thousand dollars thereof in cash, five thousand dollars thereof in preferred stock, and five thousand dollars thereof by the issuance and delivery to the vendor, F. B. Sweetser, of one hundred shares of common stock.

Q. Marseilles—John F. Clark?

A. Sixty thousand dollars, twenty thousand thereof in cash, twenty thousand dollars thereof in preferred stock and forty thousand dol-

lars by the issuance and delivery of four hundred shares of common stock; on that basis the consideration would be eighty thousand dollars according to the par values.

Q. At Marseilles—the Illinois Valley Paper Company?

A. The option on the Illinois Valley Paper Company's mill was forty thousand dollars, fifteen thousand dollars thereof cash, fifteen thousand dollars thereof preferred stock and thirty thousand dollars by the issuance and delivery to the selling company of three hundred shares of common stock, making sixty thousand dollars par value.

Q. Streator—what was the consideration for the transfer at Streator?

A. Forty thousand dollars in cash.

Q. What was the consideration of the mills at Rockford?

A. The Rhoades, Utter & Company mill at Rockford was seventy-five thousand dollars in cash.

Q. What was the consideration on the Graham & Company mill at Rockford?

A. The consideration on the Graham & Company mill at Rockford was two hundred and thirteen thousand three hundred dollars, fifty-three thousand three hundred dollars thereof in cash, fifty-three thousand three hundred dollars thereof in preferred stock, and one hundred and six thousand seven hundred dollars in common stock. I want to say that with that mill they hoisted the price, the price on their mill was one hundred and sixty thousand dollars my recollection is.

Q. Riverton—what was the consideration for the transfer of the Riverton mill?

A. Seventy-five thousand dollars in cash.

Q. Any stock in that?

A. Well the option was modified several times and one of the modifications they took stock and then they changed to cash and I think it was ultimately bought on a cash payment basis altogether.

Q. What is the consideration for Springfield?

A. Forty thousand dollars, ten thousand thereof cash, ten thousand preferred stock and twenty thousand by the issuance and delivery of two hundred shares of common stock.

Q. What was the consideration for the transfer at Rockford?

A. That is included in the Graham & Company option, their option covering two mills.

Q. That would come under the head of Rockford?

A. Yes.

Q. What was the consideration for the transfer at Yorkville?

A. Twelve thousand dollars cash.

Q. Bristol?

A. Bristol there was no option for, it was paid in cash, at the same time that the company acquired some of these other properties.

Q. Where is Bristol?

A. Near Yorkville.

Q. Both in Kendall county?

A. I think so.

Q. What was the consideration for the transfer of the mill at Vandalia?

A. One hundred and twenty thousand dollars, \$30,000 thereof in cash, \$30,000 in preferred stock, and \$60,000 by the issuance and delivery to the selling company of 600 shares of the common stock.

Q. St. Charles, what was the consideration for the transfer at St. Charles?

A. I do not find St. Charles here. It is around \$40,000, between \$40,000 and \$50,000.

Q. Does the option show?

A. I do not find the option.

Q. Well, in what way was this?

A. Partly in cash and the balance in preferred and common stock.

Q. Do you know in what proportions?

A. No, I do not recollect.

Q. Joliet, what was the consideration for the transfer of that?

A. Fifteen thousand dollars, \$5,000 cash, \$5,000 preferred stock, and \$5,000 by the issuance and delivery of 100 shares of the common stock, making the nominal consideration of \$20,000.

Q. What was the consideration for the transfer of the mill at Knightstown?

A. Knightstown I have not here, I have referred to it already as being in the files of the case.

Q. Where is that case pending?

A. In the United States court.

Q. Here in Chicago?

A. Yes. Question had arisen as to whether the Columbia
576 Straw Paper Company were liable for certain experiments made in sinking wells which it was endeavored on the part of the Knightstown Company to make the Columbia Straw Paper Company pay for.

Q. What was the consideration for the transfer of the mill at Lafayette?

A. One hundred and twenty-three thousand dollars, \$41,000 thereof in cash, \$41,000 in preferred stock and \$82,000 by the issuance and delivery to the vendor or his nominees of 820 shares of common stock, making the total consideration of \$144,000.

Q. What was the consideration for the transfer of the mill at Cedar Falls?

A. Forty-eight thousand dollars, \$12,000 thereof in cash, \$12,000 thereof in preferred stock and \$24,000 thereof in common stock.

Q. What was the consideration for the transfer of the mill at Lyons?

A. I do not find Lyons here; my recollection is that that mill was seventy-five thousand dollars, twenty-five thousand dollars in cash, twenty-five thousand dollars in preferred stock and fifty thousand dollars in common stock, making nominal consideration of

one hundred thousand dollars; that is simply a recollection, I am not clear about it.

Q. You do not know where that option is?

A. We do not seem to have it here. There was some difficulty growing out of the settlement because of the fact that there were some suits pending against one of the part owners, and I do not recall anything about the settlement.

Q. What was the consideration for the transfer of the Ft. Madison mill?

A. Eighty-four thousand dollars, twenty-one thousand dollars in cash, twenty-one thousand dollars in preferred stock, and forty-two thousand dollars in common stock.

Q. What was the consideration for the transfer of the Jackson mill?

A. Thirty-six thousand six hundred and sixty-six dollars, nine thousand six hundred and sixty-six dollars in cash, nine thousand in preferred stock, and eighteen thousand dollars in common stock.

Q. What was the consideration for the transfer of the mill at Monroe?

A. The consideration for the mill at Monroe was forty thousand dollars, fourteen thousand thereof in cash, fourteen thousand thereof in preferred stock, and thirteen thousand thereof by the issuance and delivery to the Richardson Paper Company or its nominees of two hundred and sixty shares of common stock. These

577 figures were subsequently changed and I think the Richardson Paper Company got five thousand dollars more in consideration of certain good will that was transferred in addition to what it had agreed to transfer in the original option. That is, they got fifteen thousand dollars of the forty-five thousand dollars in cash, fifteen thousand dollars in preferred stock, and fifteen thousand dollars by the issuance and delivery of three hundred shares of common stock to Joshua C. Richardson and his stockholders.

Q. What was the consideration for the transfer of the mill at Clarksville?

A. The consideration at Clarksville was forty thousand dollars, ten thousand dollars thereof in cash, ten thousand dollars thereof in preferred and twenty thousand dollars in common stock, and in a great many of these cases, and particularly I see in the Clarksville case, the taxes, insurance and other charges had to be paid, and it amounted to considerably more, just what I do not know.

Q. What was the consideration for the Lincoln mill?

A. One hundred thousand dollars, twenty-five thousand dollars in cash, twenty-five thousand dollars in preferred stock, and fifty thousand dollars by the issuance and delivery to the vendors of five hundred shares of common stock.

Q. Xenia, what was the consideration there?

A. One hundred and twenty-five thousand dollars, forty-one thousand three hundred and thirty-three dollars thereof in cash, forty-one thousand three hundred and thirty-three dollars thereof in preferred stock, and eighty-two thousand six hundred and sixty-seven in common stock.

Q. What was the consideration for the mill at Defiance?

A. Thirty-five thousand dollars. I think that was subsequently increased. I do not know just what the figures were; at any rate, they were changed. Eleven thousand six hundred and sixty-seven dollars cash, eleven thousand six hundred and sixty-six dollars in preferred stock, and twenty-two thousand three hundred and thirty-three dollars by the issuance and delivery to the Merchants' National Bank of Defiance, or E. P. Hooker, trustee, of two hundred and thirty-three and one-third shares of common stock, making the total consideration of forty-six thousand seven hundred dollars.

Q. What was the consideration for the Newark mill?

A. These two mills were sold together.

Q. Which two mills?

A. The Newark and Coshocton mills; I have forgotten just what the price was; my impression is it was one hundred and forty-five thousand dollars cash for the two mills. There were options
578 taken originally, but the conditions were so strict that there was a great deal of difficulty growing out of them, and there were a great many negotiations respecting the consideration which I had nothing to do with, so I do not know what they were.

Q. Do you know what the options on these mills called for?

A. Yes, sir; I have them here; you mean the original options?

Q. Yes.

A. The first was on the Newark mill, and was eighty thousand dollars, twenty-six thousand six hundred and sixty-seven in cash, the balance in three installments of seventeen thousand seven hundred and seventy-one dollars, at one, two and three years after date, secured by mortgage on the real and personal property, bearing six per cent. interest, and there were other conditions in regard to the taxes and insurance. The option on the Coshocton mill, that is the option taken by Mr. Sherwood, I should judge by the handwriting, called for sixty-five thousand dollars, twenty-one thousand six hundred and sixty-one dollars cash, and the balance in three installments of fourteen thousand four hundred and forty-four dollars each, payable one, two and three years after date, secured by mortgage and with other conditions. I know that these options were not accepted in this form by Mr. Stein, and he subsequently entered into a contract of purchase with the owners of the Newark and Coshocton mills.

Mr. DUPEE: You have not the terms of the contract?

A. No, I do not recollect the terms excepting there was a cash payment; my recollection is of sixty thousand dollars on the two mills, and the balance was carried on notes either made or assumed by the Columbia Straw Paper Company, and secured by the preferred stock that was deposited with the Savings & Trust Company of Cleveland, Ohio, also by certain bonds that were deposited with the said company.

Q. The preferred and common stock which you state was deposited with the Savings & Trust Company of Cleveland, for the purpose of securing the notes of the company is the stock about

which you testified this afternoon, which stood in your name as trustee, amounting respectively to eleven hundred and ten and twenty-two hundred and twenty-three shares is it not?

A. I testified to the deposit of preferred stock and bonds with the Savings & Trust Company of Cleveland, but not to a deposit of common stock with that trust company.

Q. Do you know how many bonds were deposited as collateral on these notes?

A. My recollection is that there were forty-five.

579 Q. Do you know how much the notes amounted to?

A. Well, if the cash payment was sixty thousand and the total price one hundred and five thousand dollars, the notes must have amounted to forty-five thousand.

Q. What was the consideration for the transfer of the mill at Massillon?

A. There was a difficulty about that and it was finally settled by paying fifty-three thousand three hundred dollars for the mill, of which thirteen thousand three hundred dollars was in cash, thirteen thousand four hundred dollars in preferred stock, and twenty-six thousand six hundred dollars in common stock, and subsequently the owners of the Massillon mill took bonds in place of cash, mostly bonds in place of cash.

Q. What was the consideration for the transfer of the Sandusky mill?

A. Forty-five thousand dollars, fifteen thousand dollars thereof in cash, fifteen thousand dollars in preferred stock and thirty thousand dollars by the issuance and delivery to the vendors of three hundred shares of common stock, making a total nominal consideration of sixty thousand dollars.

Q. What was the consideration for the transfer of the mill at New Philadelphia-Blakesville?

A. Thirty-three thousand dollars, eight thousand two hundred dollars thereof in cash, eight thousand three hundred dollars in preferred stock, and sixteen thousand five hundred dollars by the issuance and delivery to the vendors of one hundred and sixty-five shares of common stock.

— What was the consideration for the transfer of the Whitewater mill?

A. Ninety thousand dollars, thirty thousand dollars in cash, thirty thousand dollars in preferred stock, and thirty thousand dollars by the issuance and delivery of six hundred shares of common stock, making a total nominal consideration of one hundred and twenty thousand dollars.

Q. That is all of the thirty-nine mills?

A. Oh no, there are some more.

Q. What others have you?

A. There are Lawrence and Logansport—

Q. Leasehold properties?

A. Well they are, yes, but they were properties taken and paid for. In regard to the Whitewater mill my recollection is that there were other payments which had to be made before the mill was trans-

ferred, and a considerable amount of stock and cash was given in addition to the figures that I have last stated.

580 Q. If there were any leasehold properties, please state what they were and the considerations at which they were acquired.

A. The Lawrence Paper Company at Lawrence, Kansas, had land under a ninety-nine-year lease without rental which expired in 1971, and certain water right-privileges; it received fifty-one thousand dollars, seventeen thousand in cash, seventeen thousand in preferred stock, and seventeen thousand dollars by the issuance and delivery to the Lawrence Paper Company by Mr. Stein, of three hundred and forty shares of common stock, making a total nominal consideration of sixty-eight thousand dollars. My recollection is that there were other payments that were made to the Lawrence Paper Company, for certain water wheels and pen stocks and other appliances that were not referred to in the option at all, but which it became necessary to acquire. Another leasehold property was that of Charles A. Clark of Logansport, Indiana, the option price was fifteen thousand dollars, of which five thousand dollars was in cash, five thousand dollars in preferred stock, and five thousand dollars by the issuance and delivery to Mr. Clark of one hundred shares of common stock, making a total nominal consideration of twenty thousand dollars. My recollection is that subsequently it became necessary to pay Mr. Clark more cash, which I think Mr. Beard, Mr. Halladay, Mr. Trebein and some other officers of the company individually advanced him, but which has never been repaid, so I understand. Another leasehold property was that of F. J. Diem, who received—

Q. Where was it located?

A. He was residing, I think, at Cincinnati, Ohio, but the property was at Dayton, Ohio. Mr. Diem received thirty-six thousand dollars, was to receive thirty-six thousand dollars in the option, twelve thousand dollars in cash, twelve thousand dollars in preferred stock, and twelve thousand dollars by the issuance and delivery of two hundred and forty shares of common stock, making a total nominal consideration of forty-eight thousand dollars. Another leasehold property was that of the Hastings Paper Company at Enon, Ohio, and the consideration as shown by the option was seventy-five thousand dollars, which was payable, twenty-five thousand dollars in cash, twenty-five thousand dollars thereof in preferred stock, and twenty-five thousand dollars thereof by the issuance and delivery to the Hastings Paper Company of five hundred shares of common stock.

The WITNESS: Referring to Joliet—there were also certain leasehold rights at Joliet, which were or were not included in the option price, I am not clear about that.

581 Q. They are connected with the freehold?

A. There were certain payments that had to be made in addition to the options in a number of the places.

Q. Mr. Wolf, when did you receive from James Flanagan the

coupons on which the suit before Justice Underwood was prosecuted?

A. I do not remember.

Q. Do you know James Flanagan personally?

A. Yes, sir, I have met him.

Q. Is he a client of the firm of Guggenheimer & Untermyer, of New York?

A. I do not know as to that.

Q. He was one of the parties who originally took bonds?

A. I do not know what you mean by that, "originally took bonds;" I know he had some bonds and sold some.

Q. Bonds were issued to him the 27th and 28th of January, 1893, were they not?

A. No, I do not think they were, I am inclined to think they were not.

Q. I mean temporary bond certificates were issued to him on that date calling for bonds?

A. If temporary certificates were issued I do not recollect it, to my knowledge.

Q. Where does Mr. Flanagan reside?

A. I met him in New York.

Q. Do you know what his business is?

A. I think he is a retired capitalist.

Q. New York is his residence?

A. That I do not know.

Q. How was it you did not undertake to collect these coupons yourself?

A. Simply because we were representing—our office was, the Northern Trust Company, and I would not take any business that might conflict with their position at all in any manner.

Q. Was there any understanding that Mr. Flanagan should procure a judgment such as was procured by him as a basis for instituting these proceedings?

A. Understanding with whom, I do not know what you mean.

Q. Understanding between Guggenheimer & Untermyer and the Northern Trust Company?

A. I do not think they ever had any understanding in connection with it.

582 Q. With Guggenheimer & Untermyer?

A. I do not think they ever had any understanding with Guggenheimer & Untermyer.

Q. Was the taking of this judgment by Mr. Flanagan the cause of institution of these proceedings?

A. You will have to ask Mr. Heurtley about it.

Q. Well Mr. Heurtley and Mr. Smith state that the matter was entirely in the hands of Dupee, Judah, Willard and Wolf.

Mr. DUPEE: In that matter they do not so state.

The WITNESS: If they have so stated, I do not know. I have not attended any of the sessions and have not heard any of the testimony which has been taken, or examined it either, so I do not know what they have testified.

Mr. GRESHAM:

Q. They stated the matter was entirely in your hands and they did whatever your people directed or suggested?

A. So far as beginning the foreclosure proceedings was concerned, I have not any doubt that is correct, I know it is correct.

Q. What instructions did Mr. Flanagan give when he sent the coupons to you?

A. They were sent out for collection and I refused to take them, that was all there was to it.

Q. Did you instruct Mr. Leffingwell as to how he should proceed?

A. No, sir, I do not recall that I did.

Q. Do you know whether Mr. Flanagan had any other coupons than these coupons that he sent you?

A. If you mean if he owned bonds, I presume he did, but I do not know.

Q. You have not any idea why he did not desire the others to be collected as well as these three?

A. You are assuming that he had others.

Q. I assume that from your answer.

A. Well I do not know what Mr. Flanagan has, I know that he had these coupons because I have so testified, but what Mr. Flanagan's holdings are of bonds or stock in this or any other company I do not know.

Q. How long after he sent you these coupons was it before you turned them over to Mr. Leffingwell?

A. I think Mr. Leffingwell got them almost as soon as I got them. Mr. Leffingwell has frequently taken business that we could not take.

Q. How long had your firm, on receipt of these coupons from Mr. Flanagan, ceased to be attorneys of the Columbia Straw Paper Company?

583 A. Oh a number of—I do not recall exactly, but it was a number of weeks. We had not acted for the company for some time.

Q. Three or four weeks?

A. More than that I should say but I am not clear as to them, but should say it was more than that.

Q. Well, it was not so long as two months, was it?

A. I do not remember, but after we had ceased acting as attorneys for the Columbia Straw Paper Company. No, I should not say it was as much as two months before we had ceased; my recollection is that our resignation was tendered some time in December, 1892.

Q. Was that resignation caused by—with a view to bringing a suit to foreclose the mortgage on the—

A. Oh, there were several reasons why we considered it advisable to resign. The principal one was because of the complications that might possibly exist if it came to that point, and we wanted to be in no doubtful position; did not want any one to think that we were, and Mr. Dupee and Mr. Judah had always represented the

Northern Trust Company, and they concluded that it was our duty to resign from the Straw Paper Company.

Q. Well, there would have been no complication in your appearing for Mr. Flanagan and then subsequently appearing for all the bondholders, would there?

A. In trying to get preference for any one bondholder in advance of any others, yes; I should say yes; that would have been acting improperly if we had done so, and we refused to have the coupons in the office for any such purpose as taking a civil judgment.

Q. Well, then, you had at that time become the attorneys for the Northern Trust Company in this particular trust, had you not?

A. No, sir, we had not.

Mr. DUPEE: Explain the condition of the Columbia Straw Paper Company at that time.

A. We held coupons ourselves on bonds of our own, and it was a question whether it was—and then the company was owing us a considerable sum of money for services and disbursements—and it was a question whether, as I recall it, whether we would be justified in taking action for any one to recover any money in a civil proceeding with possible questions that might arise with respect to ourselves and our own holdings and our own claim, and to obviate any possibility of such a question arising, we refused to act for any one in a civil matter.

584 Q. Were Guggenheimer and Untermeyer advised of your resignation as attorneys for the Columbia Straw Paper Company?

A. They were subsequently; I do not know that they were at that time.

Q. How soon after your resignation were they advised?

A. I do not know; I do not recall.

Q. At whose instance were Herrick, Allen & Boyesen appointed attorneys for the Columbia Straw Paper Company?

A. I have not the slightest idea; I did not know of it until afterwards.

Q. Were you in communication with Mr. Untermeyer about the time the firm of Dupee, Judah, Willard & Wolf withdrew as attorneys for the Columbia Straw Paper Company?

A. No, sir; Mr. Untermeyer was at that time in Egypt.

Q. Were you in communication with any of his firm?

A. No, sir, not to my recollection. The immediate cause of the resignation of Dupee, Judah & Willard as attorneys for the Columbia Straw Paper Company was because I heard, quite by chance, that certain questions which I had given opinions on to the board had been, without my knowledge, referred to other attorneys in this city whose names at that time I had not heard mentioned, and that these attorneys had given practically the same opinion on the same questions, and I did not feel, in view of the fact that the company was in its—in a condition where it had defaulted on two of its coupons that that was treatment that I cared to have shown me personally, and prompted the drawing and signing of the resignation

Cross-examination by Mr. DUPEE:

Q. What was the condition of the Columbia Straw Paper Company financially at the time, about the time that the firm of Dupee, Judah & Willard resigned as attorneys for it?

A. Why, it was not good; it had defaulted on its coupons in June, 1893, also in December, 1893. My impression is that the directors of the company had paid the June coupons themselves or bought up all the coupons that were presented for payment at the Chicago office.

Q. The testimony the other day showed that certain bonds were delivered to Eugene H. Dupee, on the order of the Columbia — Paper Company, countersigned by Dupee, Judah & Willard. Do you know in what capacity Eugene H. Dupee acted in that connection?

A. Yes, sir, he was purely a messenger.

Q. I will ask you what became of the bonds that were delivered to him?

585 A. These bonds were subsequently delivered to Philo D. Beard, trustee for the bondholders, to whom I was ordered to deliver them by the owners, and he used these particular bonds as collateral for certain notes made by the Columbia Straw Paper Company for the purpose of raising money.

Q. Did Eugene H. Dupee, or any member of the firm of Dupee, Judah & Willard, including yourself, have any pecuniary interest in those bonds?

A. None whatever.

Q. Mr. Wolf, Mr. Sherwood testified he met you for the first time about the 15th day of November, 1892, and that you invited him that evening to meet him and go with him to the University Club and take dinner with him, to talk matters over, and that at that interview you stated to him that the firm of Guggenheimer & Untermeyer had put together eight hundred millions of capital stock in the shape of corporations. I will ask you if you so stated?

A. Never to my knowledge.

Q. Would you know if you did?

A. I never would have made such an extravagant statement as that; I have no knowledge that they have ever done corporation business to that extent.

Q. Or anything like that extent?

A. No, sir, I fear that Mr. Sherwood has forgotten the exact wording of the conversation.

Q. He also testified that you then told him that Guggenheimer & Untermeyer themselves were going to put up in the neighborhood of three hundred thousand dollars. Did you so state?

A. No, sir.

Q. And also that they had seen their friends down there and that they were going to put in about two hundred and fifty thousand dollars. Did you so state?

A. No, sir.

Q. Also, he testified that you then told him that there would be

an element at Buffalo who would put in up to two hundred and fifty thousand dollars. Did you so state?

A. I could not not have done so, and did not.

Q. He also testified that the firm of Dupee, Judah & Willard was going to take sixty thousand dollars of these bonds. Did you so tell him?

A. Never; they never agreed to take and never were to take and never did take a dollar of the bonds.

Q. They took some bonds, if I remember your testimony correctly, in payment for services?

586 A. These bonds, as appears by the temporary bond certificate book, were issued to Henry M. Wolf, individually, not to the firm of Dupee, Judah & Willard, and Henry H. Wolf subsequently accounted to the firm for them.

Q. How many of these bonds were there?

A. Eight.

Q. I will ask you whether, with the exception of these eight bonds, and with the exception of the five bonds purchased and paid for by each member of the firm, whether the firm or the individual members of it ever, at any time, had any bonds in addition?

A. No, sir.

Q. They did not, you say?

A. No, sir; and were not interested in any.

Q. I will ask you if you or Mr. Dupee, or Mr. Judah, or Mr. Willard were at any time promoters of the Columbia Straw Paper Company?

A. No, sir; and of no other company in any sense whatever.

Q. What connection did you or the firm of Dupee, Judah & Willard have with any of the parties whose names have been mentioned here in regard to whom interrogatories have been made, I refer now to Mr. Beard, Mr. Stein, Mr. Untermeyer, and the other parties?

A. Purely the relation of attorney and client, with the exception of the firm of Guggenheimer & Untermeyer, for which we have acted as correspondent; we never had any financial or other interests together, or in common, in any way; we worked for these parties on a retainer and for reasonable fees; in the same way as we do for other clients.

Q. What, if anything, did you or your firm have to do with getting up this scheme of this corporation?

A. Absolutely nothing, every detail of it had been arranged long in advance of the time that Mr. Beard came to me, as I testified on Saturday, these papers were at that time all prepared, and the only purpose that he had in coming to us when he did, was to get the name of the depository and introduce himself.

Q. What, if anything, did you or your firm have to do in a preliminary way in getting up the trust deed which was executed to the Northern Trust Company as trustee?

A. Oh, I should say, nothing; it is barely possible that as attorneys for the trust company the paper was submitted to Mr. Judah to see that the interests of the trustees were protected, but the paper itself was drawn in New York, it was not drawn in Chicago.

Q. Isn't it a fact that the trust deed was printed and bound before you or your firm saw it?

A. Yes, so far as the trust deed is concerned. I think the descriptions were prepared here, because there were so many difficulties about them, and so many inaccuracies in the descriptions as they had them in the East that a separate part was printed and added to the mortgage.

Q. These were in the form of exhibits, were they not?

A. In the form of schedules. In the form of schedules, prepared, I believe, in Chicago.

Q. At the time you and the other members of the firm of Dupee, Judah & Willard purchased bonds of the Columbia Straw Paper Company, what was your knowledge or information as to the value of properties which were acquired by the Columbia Straw Paper Company?

A. I had never seen a paper mill, whether a straw paper or any other kind, prior to the—well, I should say some time in the latter part of February, it might have been March, 1893; so I had no personal knowledge on the subject whatever. What information I had came to me by talking with men who professed to be well informed on the subject and who apparently had no antagonistic interest or any interest of their own to conserve. I remember Mr. Sherwood telling me a great deal on the subject.

Q. What was the character and substance of Mr. Sherwood's representations?

A. Mr. Sherwood continually said that the straw-board company—and I won't limit it to Mr. Sherwood, a great many other persons, too, constantly referred to the straw-board company, which was supposed to have between—around twenty millions, possibly a few more,—was capitalized at six million dollars, had a bonded indebtedness of a million and a quarter, and meeting its fixed charges and paying dividends of eight per cent. I remember Mr. Frees, whom I regarded as a very cautious, conservative mill man and business man—

Q. What position did Mr. Frees occupy at that time in the company?

A. He had been vice-president of the Whitewater mill; later he was a director of the Columbia Straw Paper Company, and he was also a director of the Corn Exchange Bank of Chicago and interested in a number of companies outside of Chicago, and Mr. Frees particularly said, at least I recall particularly what Mr. Frees said in regard to the values; that upon the basis of the value of the American Straw Board bonds and stock, the Columbia bonds and stock were in his judgment worth double.

Q. What representations were made to you as to the earning, probable earning capacity of the Columbia Straw Paper Company, if any?

A. Well, I think that the earnings were conservatively stated at seven hundred thousand to seven hundred and twenty thousand dollars; that was a conservative estimate of

the earnings and that was based on the cost of paper and the average selling price for a long period of years.

Q. Do you remember the figures now?

A. Why, I think it was said that paper could or was being made at eighteen dollars per ton, and that by the introduction of economics in management and systematizing the purchase of straw, and the facilities in the sale and marketing of paper, and with special reference to the savings on rents and commissions, that the cost of paper could be reduced, I think, to sixteen dollars.

Q. A ton?

A. A ton, and at the average selling price of twenty-six dollars, and something would show a profit on the minimum output sufficient to pay a profit in excess of seven hundred thousand dollars annually.

Q. And the million of bonds bore interest at what rate?

A. Six per cent.

Q. Which would require sixty thousand dollars a year?

A. Yes, sir.

Q. And I think the sinking fund was to be one hundred and ten thousand dollars a year to retire the bonds, was it not?

A. Yes, sir.

Q. That would make for that purpose one hundred and seventy thousand dollars?

A. Yes, sir.

Q. And if I remember correctly there was a million of preferred stock, I believe—

A. Yes, sir.

Q. That was to bear cumulative dividends and payable quarterly; that would require eighty thousand dollars, which would make two hundred and fifty thousand dollars of fixed charges?

A. Yes, sir; leaving four hundred and fifty thousand dollars to five hundred thousand in dividends to be divided among the holders of common stock, amounting to three million dollars; some of that stock was the property of the company.

Q. That would pay dividends on common stock of how much, at that rate?

A. At least fifteen per cent.

Q. Who made these representations to you?

A. Oh, they were, I can say they were very general. There was not a mill man that talked on the subject of the Columbia Straw Paper Company, that was not enthusiastic as to the possibilities.

589 Q. As to the possibilities upon this basis?

A. As to the possibilities upon this basis, yes, sir; I say that these figures are conservative figures.

Q. The time you and the other members of your firm bought bonds, did you believe these statements?

A. I certainly did, or I would not have bought any bonds, nor would I have favored doing the great amount of work that was done for the bonds, and stock that we did receive in place of cash which we might have received.

Q. You stated that the firm——

The WITNESS: Let me add here, that it was—we would have received more cash, I think, as explained briefly the other day, that we were to receive eight thousand dollars cash in addition, but that was simply to do the counsel work in connection with the organization of the corporation. Our duties had nothing whatever to do with the titles or the conveyancing or clearing up the titles or any work respecting real-estate work at all. It was simply the corporation work.

Q. You stated that the firm of which you are a member were employed for several months, I do not now remember the months, in connection with the perfecting and organization of the company, and in the examination of titles and service connected therewith; how long a period was that?

A. Before the details were finally completed?

Q. Yes.

A. Oh, I should say seven or eight months.

Q. What part of the office force were employed during that period?

A. Well, we had——

Q. Speaking now of the members of the firm and their employés?

A. Mr. Willard and I devoted practically all the time, and Mr. Hood, Mr. Henry, who was specially engaged to work on the various deed- and correct descriptions, and Mr. Bliss were at the work all the time. Then there were two or three stenographers who were substantially engaged doing nothing else but printing out opinions and attending to the correspondence respecting titles, pertaining to the details which I believe I conducted.

Q. Was the time of Mr. Dupee and Mr. Judah employed to any considerable extent?

A. Yes, sir; when it became necessary to split knots, why I think Mr. Dupee was consulted on a number of questions, especially when it came to taking in the mills. There were a number of parties who wanted to withdraw, because they saw that the organization of this company would render the properties they owned and
590 controlled much more valuable. In one case there was, in several cases, there were threats of litigation, and in a number of cases there were offers of large sums of money to be released from the option contracts, and Mr. Judah—these matters were generally submitted to Mr. Judah for opinions and examination of law points in connection with parts of contracts, and I think Mr. Judah was asked to examine some peculiarly difficult titles, notably down in Ohio, and I think one in Indiana.

Q. There were messengers also, employed, were there not?

A. Yes, sir. I should say that there were from seven to ten people engaged on the work, certainly continuously for three months, and six or seven people three months more, and in addition to that, as I testified to the other day, it became necessary for Mr. Willard to go out of town for, I think, four or five days, to Ohio, and Mr. Hood went to Logansport, Cleveland and Springfield; I went to Springfield and Newark, where I was engaged

three or four days, and I do not recall all the travelling at this time, but it was simply a tremendous amount of detail and responsibility.

Q. Mr. Hood and Mr. Henry were members of the bar, were they?

A. Mr. Henry was a practicing lawyer with offices in the Portland block. I do not know whether Mr. Hood was admitted at that time or not, but he was a business man with a great deal of experience in the class of work he was doing at that time.

Q. How long have you been a member of the Chicago bar?

A. Since 1886.

Q. Do you know the value of legal services in Chicago?

A. Yes, sir; I think I do.

Q. What, in your judgment, was a reasonable compensation for the work done by the firm of Dupee, Judah and Willard in connection with the organization of the Columbia Straw Paper Company and the attention which was given these titles?

A. Well, I would not knowingly undertake to do the same amount again for a cash fee of fifty thousand dollars.

Q. You consider that would have been a reasonable fee?

A. A very reasonable fee. Based upon fees that I have received since that time and my knowledge of what attorneys are paid, I would say that that would be a very moderate fee for the amount of work necessarily done in the matter.

Q. Have you yourself, or has the firm of Dupee, Judah and Willard ever at any time had any common or joint business interests with Mr. Emanuel Stein?

A. Never.

Q. Mr. Wolf, you have produced on this hearing the temporary bond certificate book and the option contracts which have
591 been referred to in the testimony, and certain check books. Now I will ask you what knowledge as to those books and papers the other members of your firm than yourself had at the time?

A. Absolutely none, Mr. Dupee; not any more than they have about my personal check book.

Q. What knowledge had Mr. Dupee, up to the last three or four days, as to the books and papers you had in your possession, and what knowledge had he as to your possession of this certificate book and option contracts and other papers?

A. None whatever.

Q. Where did you keep them?

A. Let me explain a little more fully.

Q. Very well.

A. The office of Dupee, Judah and Willard covers several thousand square feet, and we have several very large vaults and some safes, one safe, and I personally have a private box. The papers which have been produced here were put away, stored, and I never thought any call would ever be made for them, and I never knew that any call was made for them. I do not believe that Mr. Dupee ever knew that the papers were in the office, because the vault in which these papers were kept was fully seventy-five feet I should say,

three or four rooms, removed from his vault; three rooms removed from his vault.

Q. And is immediately connected with your own private room, is it not?

A. Yes, sir; and these papers were bundled up, put on a shelf — other papers that have been in the office probably since the *the* Chicago fire, which I never had anything to do with and had no knowledge of, just the same way that Mr. Dupee or any other member of the firm had no knowledge of these papers. I did not know, myself. I telephoned, Monday, to get my check book, and that was in the vault, and they made a thorough search and it took twenty minutes probably to find it. The checks I kept in my private box, which no one else had access to.

Q. Have you found the three or four checks about which you were interrogated?

A. I have not had opportunity to look, but I have the check book itself from which all the checks were taken.

Q. Do you remember the numbers of the checks which were not produced by you the other day?

A. No. 2, which was issued to F. S. Sweetser January 27, 1893, and amounted to five hundred dollars; number 52, which was a check for one thousand dollars, that was issued to C. D. Robertson and held back until the title of the Lafayette paper mill plant of Lafayette, Indiana, should be quieted. That check
592 was sent to Mr. Robertson within the last thirty or sixty days, and is probably now in the Northern Trust Company. I have not sent for it, and that is the reason I haven't it here.

By Mr. GRESHAM :

Q. What was the date of that check, please?

A. March 14th, 1893; that check was held back as a guarantee that all cost in that proceeding would be paid. Check No. 75 was issued to the order of Emanuel Stein on the 21st day of January, 1893, and amounts to sixteen hundred dollars, and was endorsed over to the Columbia Straw Paper Company. Check 78 was issued on July 9th, 1893, to the order of Emanuel Stein, and was by him endorsed over to the Columbia Straw Paper Company, and amounts to nine hundred dollars. Both of these latter checks went through the bank account of the Columbia Straw Paper Company. Then, check 84, I think the last check shown here is 83, I find there was a check 84 issued July 2nd, 1894, for seventeen hundred dollars, of Emanuel Stein, and was by him endorsed over to the order of the Columbia Straw Paper Company.

Q. Have all these checks been paid?

A. Yes, sir.

Q. No check has ever been issued to Mr. Stein that has not been paid?

A. No, sir.

Q. That is, by you?

A. That is, on this account.

Mr. DUPEE: You stated that the Columbia Straw Paper Company was in default upon its June coupons, 1893?

A. No, not the June coupons 1893, the June coupons 1894.

Q. It should be 1894?

A. The directors, I think, paid the June coupons 1894; the directors paid one coupon.

Q. Did they pay it or purchase it?

A. They purchased it as I have explained. They bought all the coupons presented; they never have been cancelled, but the directors owned them or did own them; they pledged them, I think.

Q. What other coupons were outstanding?

A. December, 1894, June and December, 1895.

Q. How much did each set of coupons amount to?

A. Thirty thousand dollars. At present there are one hundred and twenty thousand dollars of coupons defaulted.

The WITNESS: There is one question you asked me the other day, Mr. Gresham, and that was you asked me to produce the modification agreement to which I have referred, but you have not asked for it again; I have it here, but you have not asked any question about it; I said I would have it here.

By Mr. GRESHAM:

Q. What modification agreement? Between Mr. Stein and the Columbia Straw Paper Company?

A. Yes, sir; in which I am trustee for Mr. Stein, Mr. Beard, and a great many others.

Q. Will you allow me to look at it?

A. Certainly. (Handing document to Mr. Gresham.)

The WITNESS: Let me say here that you inquired the other day if I know Mr. Stein did not have any of these bonds, did not take any of these bonds; I find that Mr. Stein executed this agreement on the 28th day of January or subsequent thereto—

Mr. DUPEE: What year?

A. 1893; it was executed subsequently, I believe, and he has loaned twenty thousand bonds, and subsequently those bonds were put up.

Mr. GRESHAM: How?

A. Deposited with me, or with the Northern Trust Company in accordance with the terms of the instrument which I hand you?

The WITNESS: I forgot to state one thing, that among all the other duties that we had to perform was to look into the regularity of all of the organization of corporations in nine different States, and see that the proper resolutions were passed by the stockholders and directors authorizing the sale of their properties to Mr. Stein, who was the grantee in every deed and for almost every bill of sale; and also see that all these papers were properly drawn, executed, acknowledged, and recorded. I think that it was something like, well, there were probably several hundred documents put on record

in the several States, and the recording fees amounted, as near as I can recall now, to twelve or fifteen hundred dollars.

Mr. DUPEE: Did you and your firm, in connection with this labor, examine the statutes of these various States, relating to corporations, and relating also to transfers of real estate?

A. Yes, sir; and the right to hold real estate.

Q. And the laws of New Jersey as to the organization of corporations, their powers and duties?

A. No, that work was done by the counsel of the company, Mr. Untermeyer.

Q. When did Mr. Untermeyer, or the firm of Guggenheimer & Untermeyer commence to be attorneys, actual attorneys for the company?

594 A. I should say around about the 10th; prior to the 10th day of December, between the first and tenth day of December.

Q. Eighteen hundred and—

A. —ninety-two. W- became attorneys for the company I think the first of February, 1893.

Q. Is that the date at which the firm was formally elected?

A. Yes, sir; a committee was appointed and waited upon us to find out what our charges would be at an annual retainer, and I think they came some time around the first day of February, 1893, my impression is that the records will show when the formal vote was passed, I do not recall the exact date.

Q. Mr. Wolf, have you any personal knowledge as to what was done by Mr. Untermeyer in connection with the organization of this company prior to the latter part of December, 1892? Any knowledge of your own other than hearsay?

A. No, sir; I should say that was generally correct, I may have heard some things that were said in the course of conversations, but I do not recall anything particularly at this moment which makes me qualify the answer.

Mr. GRESHAM: We will reserve the right to introduce this modification agreement in evidence if we are granted any further time. We probably will want to use it.

The WITNESS: You understand that is my personal document?

Mr. DUPEE: Counsel for complainants insists that under the conditions of the stipulation entered into by counsel, that the paper cannot be introduced unless now introduced in evidence.

Mr. DUPEE:

Q. Mr. Wolf, the paper which you have just produced is, I understand, a modification of the original contract entered into between Emanuel Stein and the Columbia Straw Paper Company, is that correct?

A. Yes, sir.

Q. What is the date of that paper?

A. January 28th, 1893.

Q. That is the paper that you were asked the other day to produce is it not?

A. Yes, sir; Mr. Gresham asked me to produce it.

MR. DUPEE: On behalf of the complainants, I offer in evidence the paper referred to and ask that a copy of it be made and that the witness be permitted to retain the possession of it.

(Said document is in words and figures as follows, to wit:)

595

COMPLAINANTS' EXHIBIT AGREEMENT.

COMPLAINANTS' EXHIBIT.

An agreement made this twenty-eighth day of January, in the year one thousand eight hundred and ninety-three, between Emanuel Stein, of the city of Chicago, in the State of Illinois (hereinafter called the "vendor"), party of the first part, the Columbia Straw Paper Company, a corporation organized under the laws of the State of New Jersey (hereinafter called the "company"), party of the second part, the undersigned owners of first-mortgage bonds of the Columbia Straw Paper Company (hereinafter called the "bondholders"), party of the third part, and Henry M. Wolf, as trustee, of the city of Chicago and State of Illinois (hereinafter called the "trustee"), party of the fourth part.

Whereas, the vendor heretofore contracted to convey to the company thirty-nine (39) mill properties enumerated in the schedule attached to a certain contract between the vendor and the company, bearing date the fifteenth day of December, 1892, as by reference to said contract will more particularly appear;

And whereas, the vendor is unable to convey all said properties under the precise terms specified in the contract, by reason of the differences that have arisen between the mill owners and himself as to the construction of their respective options, and the company, being anxious to acquire all of said properties, has been in negotiation with the vendor with a view to effecting such modifications in the aforesaid contract as will lead to the acquisition of the properties therein enumerated; upon terms as advantageous to the company as provided by the original agreement;

And whereas, it has been necessary, as to three of the mills enumerated in the schedule attached in the accompanying contract, in order to require the same without litigation, that as to the New-ark and Coshocton mills the company shall make its eight (8) promissory notes, aggregating eighty-five thousand dollars (\$85,000), secured by forty-five thousand dollars (\$45,000) first-mortgage bonds, and forty-five thousand dollars (\$45,000) preferred stock of the company; as to the Sangamon mills, that the company shall take the property subject to two promissory notes of the vendor in the aggregate amount of fifty thousand dollars (\$50,000), to be secured by fifty thousand dollars (\$50,000), of first-mortgage bonds of the com-

pany; that as to the Rhoades-Utter mill, the company shall
596 accept the title to the property subject to a mortgage of fifty
thousand dollars (\$50,000), payable in installments, in one,
two and three years, and bearing interest at the rate of six per cent.
per annum;

And whereas, the company is not possessed of any of its first-
mortgage bonds or preferred stock required to secure the said notes,
and the bondholders have offered to loan to the company an amount
of bonds necessary to carry it into effect the modified arrangement,
so as to require all the mills specified in the contract;

And whereas, the vendor has proposed to the company and to the
bondholders that if the company will assist in acquiring the New-
ark and Coshocton, Rhoades-Utter and Sangamon mills, upon the
modified terms, so that the difference between such mill-owners and
the vendor may be compromised, settled and adjusted, and litigation
avoided, then he, the vendor, will transfer to the trustee eleven
hundred and ten (1,110) shares of preferred stock of the company, of
the aggregate par value of \$111,000, and twenty-two hundred and
twenty (2,220) shares of the common stock of the company, of the
aggregate par value of \$220,000, which securities so to be trans-
ferred shall be held by the trustees to indemnify the company against
any loss or liability on account of any of the promissory notes here-
inafter provided for, or by reason or on account of the acceptance of
the Rhoades-Utter mill, subject to the aforesaid mortgage now and
existing lien thereon, and to indemnify the company against any
liability to the bondholders by reason of the loans and advances of
bonds hereinafter provided to be made;

And whereas, the vendor has offered to the company that if it will
modify the above-mentioned contract in the particulars herein pro-
vided, he, the vendor, *still* procured the majority of the mill prop-
erties to be conveyed to the company in advance of the payment of
the purchase-money provided to be paid by the company, and will
do and cause to be done various other matters and things to the in-
terest and advantage of the company.

Now, therefore, in consideration of the foregoing recitals, and for
other good and valuable consideration, it is covenanted and agreed
between the parties hereto as follows:

First. The contract between the vendor and Julia Stein, his wife,
and the company, bearing date the 15th day of December, 1892, is
hereby modified as follows:

1. Upon the conveyance to the company of a good and indefeas-
ible title in and to the mill properties enumerated in the schedules
attached to said agreement, the company shall make, execute
597 and deliver its eight (8) promissory notes to order of the New-
ark and Coshocton mill-owners, or their nominees, aggregat-
ing the sum of eighty-five thousand dollars (\$85,000), all of which
notes shall bear interest at the rate of six per cent. per annum, in
accordance with the terms of a certain agreement bearing date the
17th day of December, 1892, made between the vendor and the said
Newark and Coshocton mill-owners, which notes shall be in the fol-
lowing amounts and payable at the following times:

One note of \$10,000, payable	6 months from the date thereof.
" " 10,000, "	9 " " "
" " 15,000, "	12 " " "
" " 10,000, "	15 " " "
" " 10,000, "	18 " " "
" " 10,000, "	21 " " "
" " 10,000, "	24 " " "
" " 10,000, "	27 " " "

2. The company shall accept the deed of the Rhoades-Utter property subject to a mortgage thereon for the sum of fifty thousand dollars (\$50,000), made to secure three (3) promissory notes, to be executed by the vender, one for the sum of seventeen thousand dollars (\$17,000), payable one year from the date thereof, one for the sum of seventeen thousand dollars (\$17,000), payable two years from the date thereof, and one for the sum of sixteen thousand dollars (\$16,000), payable three years from the date thereof; all of which notes shall be equally secured by said mortgage and shall bear interest at the rate of six (6) per cent. per annum.

3. The company shall assume and pay two certain promissory notes to be made by the vender, payable to George N. Black, trustee, each of which notes shall be for the sum of twenty-five thousand dollars (\$25,000), with interest from October 15, 1892, at the rate of seven per cent. per annum, and shall bear date on or before February 10, 1893.

Second. In consideration of the obligations hereby assumed by the company, the vendor herewith assigns, transfers and sets over unto the trustee, upon the trusts hereinafter prescribed, certificates representing eleven hundred and ten (1,110) shares of the preferred stock of the company, of the aggregate par value of one hundred and eleven thousand dollars (\$111,000), and twenty-two hundred and twenty (2,220) shares of the common stock of the company, of the aggregate par value of two hundred and twenty-two thousand dollars (\$222,000).

598 Third. The bondholders hereby loan and advance to the company the amount of bonds of the par value set opposite their respective names, aggregating one hundred and forty-five thousand dollars (\$145,000), of such bonds, and the vendor hereby directs the trustee, from and out of said eleven hundred and ten (1,110) shares of preferred stock hereby assigned to him upon the trusts hereinafter provided, to transfer to the company four hundred and fifty (450) shares of said preferred stock, of the aggregate par value of forty-five thousand dollars (\$45,000).

4. Forty-five thousand dollars (\$45,000) par value, of the bonds herewith loaned by the bondholders to the company, and the \$45,000, par value, of preferred stock hereby directed to be transferred by the trustee to the company, shall be applied as follows:

\$45,000 of said bonds and the said 450 shares of preferred stock shall be deposited with the *Farmers' Deposit National Bank of Pittsburgh*, in the State of Pennsylvania, as collateral security for the payment of the promissory notes aggregating \$85,000 hereinbefore

provided to be executed and issued by the company to Newark and Coshocton mill-owners, which bonds and preferred stock shall be held by the said bank for the purposes and upon the trusts specified in the agreement between the Newark and Coshocton mill-owners and the vendor bearing date the seventeenth day of December, 1892. Upon the payment of the said notes the bonds shall be returned to the bondholders and the preferred stock shall be surrendered to the company and be canceled. Meantime the interest upon said bonds and the dividends upon the preferred stock shall be received and collected by the trustee, to be applied as hereinafter provided.

B. \$50,000, par value, of the said bonds, shall be deposited with the Ridgley National Bank of Springfield, Illinois, as a special trust fund, to secure the payment of the promissory notes made by the vendor to the order of George N. Black, trustee, for the benefit of the Sangamon Paper Company, pursuant to an agreement bearing date the twenty-eighth day of December, 1892, between the Sangamon Paper Company and the stockholders thereof and the vendor. Upon the payment of said notes by the company, the bonds deposited to secure the same shall be returned to the bondholders, and meantime the interest thereon shall be collected by the trustee and shall be distributed by him as hereinafter provided.

C. The balance of \$50,000 of said bonds shall be transferred to the trustee and by him deposited with the Northern Trust Company to indemnify the company against all liability on account of
599 the mortgage of \$50,000, subject to which the conveyance of the Rhoades-Utter property has been accepted by the company in reliance upon said deposit of bonds with the trust company named in the deed of trust given to secure the issue of bonds.

Fourth. The trustee is hereby authorized to sell and dispose of the preferred and common stock herewith transferred to the trustee, at public or private sale, on such terms as to credit or otherwise as he may deem reasonable, and without restriction or liability, and to apply the proceeds of sale, or such parts thereof as may be deemed necessary for that purpose, towards the extinguishment of the mortgage on the Rhoades-Utter property; and if, after exhausting all of said securities, the amount realized is insufficient to discharge said mortgage, the \$50,000 par value of bonds herewith transferred to him, or such part thereof as may be necessary for that purpose, shall be sold and disposed of to satisfy the lien of said mortgage, to the end that the company shall acquire said Rhoades-Utter property free from the lien of said mortgage.

Fifth. If the company shall make default in the payment of any of the notes hereby agreed to be executed, endorsed, or the payment whereof is hereby assumed, and any part of the bonds hereby loaned to the company by the bondholders shall be lost to the bondholders by reason of such default, the company shall forthwith, upon the demand of the bondholders, make good such loss at the par value of said bonds; and in the event of its failure so to do all the preferred and common stock herewith transferred by the vendor to the trustee that may remain in the hands of the trustee after the mortgage on the Rhoades-Utter property has been satisfied shall go and

belong to the bondholders, as an indemnity to them against such loss, and the trustee shall forthwith, upon notice to him by any bondholder, and upon proof that any of the bonds hereby loaned to the company have been lost to the bondholders, dispose of the shares of the preferred and common stock remaining in his hands under this trust at public or private sale, upon such terms as to credit or otherwise as he may deem just, and shall apply the proceeds of such sale ratably towards reimbursing the bondholders for any loss they may have sustained by reason of the bonds loaned to the company. The trustee shall distribute the proceeds of the sale of the securities ratably among the bondholders in the proportion of their respective losses, and for every such purpose the bonds shall always be regarded as of an actual value equal to the par value thereof.

Sixth. If and when the company shall have paid the promissory notes hereby provided to be executed, indorsed and assumed, 600 and the bonds herewith loaned to the company to secure said notes as well as the bonds that shall be deposited to secure the Rhoades-Utter mortgage shall have all been returned to the bondholders, together with the interest collected thereon, the trustee shall surrender and transfer to the company the shares of preferred stock and common stock hereby assigned to him, or such part as may remain in his hands after the execution of the trusts hereby created, together with all dividends that may have been collected upon such shares of stock; and thereupon the company shall cancel the stock so surrendered by the trustee, and the same shall be and become a part of the treasury stock of the company, as though such stock had not been issued.

Seventh. Pending the return of said bonds to the bondholders, the trustee shall pay over to them or their order all interest collected on the bonds herewith loaned by them respectively to the company, from time to time, as he shall collect the same. All dividends received upon the preferred and common stock herewith assigned to him shall be held by the trustee, together with the stock, as a part of the security to the bondholders for the advances made by them and shall be available to the latter as against any loss they may suffer by reason of such advances.

Eighth. If any of the bonds hereby loaned to the company shall be drawn for redemption before the same shall — been released by the persons to whom they may have been pledged as collateral security under the terms of this agreement, it shall be the duty of the trustee to substitute an amount of money equal to the par value of the bonds so redeemed, and promptly to pay over the premium received upon such redemption to the bondholders from whom said bonds were borrowed. The company shall vote for and pay over to the bondholders whose bonds have been thus redeemed, interest on the moneys belonging to them that have been substituted in place of such bonds, at the rate of six per cent. per annum, and the trustee may at his option purchase at par other bonds, part of the issue, which substituted bonds he may deposit in place of the money,

to the end that the company shall be at no loss of interest by reason of such substitution.

Ninth. Except as hereby expressly modified, the above agreement of December 15, 1892, between the vendor and the company is hereby in all things ratified, reaffirmed and approved.

Tenth. Pending the performance of this agreement by the company, the trustee shall vote upon the shares of common stock herewith transferred to him; and each of the parties hereto doth hereby covenant with the trustee, as the condition upon which he receives the trusts hereby created, to indemnify and save harmless the trustee from all personal liability by reason of any matter or thing connected with the trust, or by reason of any act done or omitted by him, except that the trustees shall be liable for his personal misconduct. Every discretion hereby vested in the trustee, and every trust and power hereby granted is upon the express condition that the same shall be free from any fetter or liability whatsoever on the part of the trustee.

In witness whereof, the parties hereto, individuals, have hereunto set their hands and seals, and the company has caused this instrument to be signed and its official seal to be hereto attached pursuant to a resolution of its board of directors, the day and year first above written.

[OFFICIAL SEAL.] EMANUEL STEIN.
COLUMBIA STRAW PAPER CO.,
By F. C. TREBEIN, *V. Pres't.*
HENRY M. WOLF, *As Trustee.* [SEAL.]

Names of bondholders.

Amount of bonds.

Randolph Guggenheimer, by Sam'l Untermeyer, his attorney-in-fact.....	\$12,000	[SEAL.]
Isaac Untermeyer, by Sam'l Untermeyer, his attorney-in-fact.....	1,000	[SEAL.]
Sam'l Untermeyer.....	12,000	[SEAL.]
Philo D. Beard.....	35,000	[SEAL.]
Emanuel Stein.....	20,000	[SEAL.]
B. M. Frees.....	5,000	[SEAL.]
E. G. Church.....	10,000	[SEAL.]
F. C. Trebein.....	20,000	[SEAL.]
Rich. T. Higgins.....	5,000	[SEAL.]
J. B. Halladay.....	10,000	[SEAL.]

Testimony of H. M. Wolf.

Redirect examination by Mr. GRESHAM:

Q. You bought straw board at one hundred and four and a half, and you thought you were getting in pretty well on the ground floor?

A. I was very well, I was credibly informed by business men.

Q. You were, or were you up about the third or fourth story?

A. No, sir, I never have learned that.

Q. Then when you struck this straw-paper deal, it looked as if you were getting down, way down in the cellar, a very good opportunity to get in?

A. Not any more than anybody else, I understood that everybody was being treated alike.

602 Q. You were very anxious to get all the information you could?

A. Certainly.

Q. You were inquiring from everybody, of the vendors, as to the possibilities and all details of this kind?

A. I should not say everybody.

Q. I mean everybody who was likely to know?

A. No, people whose judgment I should be likely to think something of.

Q. Well, was it part of your duties under your retainer from Guggenheimer & Untermeyer to ascertain the possibilities that were in a deal of this kind?

A. No, sir, they did not ask my advice and never got it.

Q. You were simply employed to do the legal work in connection with looking after the properties, and so forth?

A. Yes, sir, as I have testified.

Q. Well, didn't it at any time ever strike you it would be a good thing to take some of those bonds?

A. I thought it was a purchase, certainly.

Q. You thought it would be a nice thing if you could get into this syndicate that was financing the company, that it was a pretty good scheme?

A. No, sir, I never heard of any syndicate, as I told you, I bought the bonds, the same as I might buy from any responsible broker, or from the First national bank, or from N. W. Harris, or people I might be in the habit of dealing with.

Q. You had means of learning just how the thing was being financed?

A. I had the means of learning.

Q. Yes.

A. It had been already provided, and done, and been done long before I ever bought a bond, just as the straw-board stock had been issued long before I ever bought a share of the stock.

Q. But it was a working organization in the field and you bought at one hundred and four and a half long before the combination had been made?

A. As to that, I do not know; some friends of mine were buying some of this stock, they were particular friends, W. H. and J. H. Moore; they had been interested in Diamond Match Company, and in fact this particular gentleman was, and is a director of the Diamond Match Company, and he had this opportunity of buying this stock, and he was a friend of mine, a client of mine, and we had been interested in some things together, and he suggested
603 that we buy some of that stock. I knew nothing more than what he told me regarding the American Straw Board Company.

Q. I will ask you, Mr. Wolf, if it was not the case that you were on the lookout for a speculation of the kind that you supposed this would be, that you were so eager for information as to the probabilities of what it might be?

A. No, not at all; I was eager for information because I had never heard anything about straw paper prior to the day that Mr. Beard called to see me in June, 1892, and I knew nothing about it, only—I knew nothing whatever regarding the industry.

Q. Wasn't it with a view of probably taking some of the securities that you were seeking for this information?

A. No, sir; I should say no.

Q. That never occurred to you?

A. No more than if my client were to make a loan on the fee under this building; I should feel interested in knowing the value of this building and relative values in this neighborhood.

Q. If you were simply employed to draw the lien?

A. Certainly, I should as a lawyer; I should regard it as a certain amount of information I ought to have.

Q. Did you advise Guggenheimer & Untermeyer in anything with reference to the information you got?

A. No, I think not; they did not—I never talked to Mr. Guggenheimer, or any one of that firm, excepting in a very general way, about this matter; I may have talked somewhat fully—excepting, possibly, Mr. Samuel Untermeyer, and what I did, as I have said, was purely in a legal way, in pursuance of my professional duties.

Q. Then, until today or yesterday you had documents in your possession which the senior member of the firm did not know were possibly good for a few thousand dollars fee then; is that right? Possibly good for a two-thousand-dollar fee, that the senior member of the firm knew the straw paper company owed you, and was unpaid?

A. Why, it was this way, Mr. Gresham: Mr. Dupree does not get time to bother about my own clientage, or ask what I am particularly looking after and interested in, and if I am bad business man enough to get a bad account on the books, he is altogether too considerate to remind me of it, and I am a little bit anxious not to be reminded about it. This subject was not talked about, excepting possibly once, when I refused to deliver certain papers, but Mr. Dupree did not know what the papers were and I never told him, and, so far as his knowledge is concerned of these papers, I
604 venture to say he has not any knowledge of what papers are in my vault, as I have not of what is in his vault, excepting papers I am particularly interested in.

And the foregoing is all the testimony offered on behalf of the defendants.

Adjourned.

(Endorsed :) Filed April 15, 1896. S. W. Burnham, clerk.

Option Contract.

Agreement, made this — day of —, in the year one thousand eight hundred and ninety-two, by —, and between —, a corporation organized under the laws of the State of — (hereinafter called the company), and —, being all the stockholders in said company (and together with the company being hereinafter called the vendors), all parties of the first part, and Philo D. Beard and Thomas T. Ramsdell, both of the city of Buffalo, county of Erie and State of New York, parties of the second part;

Whereas, the company is engaged in the manufacture of straw paper, and merchandise of a like character, at —, in the State of —, and owns, in connection with its business, mills or factory buildings located at —, in the State of —, together with land upon which the mills and factory buildings are constructed, and — acres of land in the immediate vicinity thereof, and certain fixtures, machinery, chattels and other assets used in the conduct of its business; and

Whereas, the vendors are desirous of effecting a sale of their property, business, assets and effects, and of the good will of their business and of the shares of stock of the company, unto a corporation about to be organized by the parties of the second part; and

Whereas, the parties of the second part have offered to organize such corporation, provided they can secure options for the purchase of the mills, property, assets, effects and good will of the vendors;
and

605 Whereas, it is the purpose of the parties of the second part to organize one or more corporations in such State or States of the United States, as they may be advised, with a share capital of one million dollars in preferred stock, entitled to a dividend of eight per cent. per annum; and three million dollars of common stock, and with a total bonded debt, secured by mortgage or trust deed, of one million dollars;

Now, therefore, in consideration of the foregoing recitals, and of other good and valuable considerations, it is hereby covenanted by and between the parties hereto and their respective legal representatives, successors and assigns, as follows:

First. The company, with the assent and by the direction of the undersigned stockholders, does hereby grant unto the parties of the second part an option, ending December 31, 1892, for the purchase by the parties of the second part, their nominees or assigns, or a corporation to be organized by them, of all the real property, including in such purchase the mill buildings at —, in the county of — and State of —, together with the lands owned by the company in connection with such mills, and all fixed plant, machinery, tools and fixtures of the company, and the good will of its business, including all trade-marks and trade-names, with the exclusive right to the use of the corporate name and its franchise and undertaking; the intent hereof being to vest in the parties of the second part, their nominees or assigns, or a corporation to be organized by them, the absolute and indefeasible title in and to all the

property of the company as aforesaid, wheresoever the same is situate, free from all debts, liens, taxes (whether general or special), assessments, claims, charges, impositions and incumbrances of whatsoever kind or nature, and to assure and warrant unto the parties of the second part, their nominees or assigns, or unto a corporation to be organized by them, the absolute title to the property, business, good will and franchise hereby agreed to be sold.

Second. The stockholders of the company, subscribers hereto, hereby grant unto the parties of the second part, their nominees and assigns, or unto a corporation to be organized by them, an option for the term ending December 31, 1892, for the purchase of the number of shares of stock of the company set opposite their respective names; and the vendors severally covenant that if and when the parties of the second part, their nominees and assigns, or a corporation to be organized by them, shall accept said option by a written notice served upon the company, they will deposit the certificates representing the shares of stock held by them, respectively, in the Northern Trust Company, located in the city of Chicago and State of Illinois, to be held by such trust company, subject to the terms of this agreement, and to be delivered and surrendered unto the parties of the second part, their nominees or assigns, upon the assuring by the parties of the second part unto the company of the payment of the moneys and securities hereinafter provided to be paid in the manner hereinafter prescribed.

Third. If and when the parties of the second part, their nominees or assigns, or a corporation to be organized by them, shall accept the option hereby granted, they shall signify such acceptance by the service by mail on the company of a notice in writing, and within ten days after service of such notice on the company it shall procure proper deeds, conveyances, bills of sale, shares of stock of the company and certificates representing the same, and other assurances, to be executed under its corporate seal, pursuant to the resolution of its board of directors and with the assent of its stockholders, vesting in the parties of the second part, their nominees or assigns, or in such corporation as may be designated by them, the absolute title to all the real property, and all fixed plant, tools, fixtures and machinery, and the good will of its business and its franchise and undertaking. The deeds, bills of sale, agreements and other assurances so to be executed, shall, within ten days after service of such notice, be deposited in the Northern Trust Company of the City of Chicago and State of Illinois, accompanied by certificates representing the entire stock or share capital of the company, except such shares as may be necessary to qualify the existing directors of the company (which latter shares shall be placed under the control of the parties of the second part), all of which certificates of stock shall be endorsed in blank, to be held by said trust company for delivery pursuant to the terms of this agreement.

Fourth. The parties of the second part agree with the vendors that in the event of the acceptance by them of the option, hereby granted, they will pay for the real property, all fixed plant, fixtures, tools, machinery, business, shares of stock and good will, as soon after the

transfer thereof as will permit of the due and proper issue and delivery of bonds and stock, and in the manner provided by this agreement, the sum of — dollars, which shall be payable as follows: — dollars thereof in cash; — dollars thereof in preferred

607 stock of such a corporation as they may organize, which stock shall be entitled to a dividend at the rate of eight per cent. per annum, payable quarterly out of the profits. The preferred stock so to be issued shall have a preference as to capital as well as dividend. — dollars thereof by the issuance and delivery to the company, or its nominees of — shares of common stock of such corporation as the parties of the second part, their nominees or assigns, may organize.

Fifth. If, after the parties of the second part, their nominees or assigns, shall have accepted the option hereby granted, and shall have so notified the company, the vendors shall have deposited the deeds, conveyances, bills of sale, shares of stock and certificates representing the same, vesting in the parties of the second part, their nominees or assigns, or in any corporation to be designated by them, the absolute title to the property, business, effects and good will of the company, the parties of the second part will organize a corporation, to be known as "The Columbia Straw Paper Company."

The corporation so to be organized shall have a share capital of four million dollars, divided as follows: One million dollars in preferred stock, entitled to a dividend at the rate of eight per cent. per annum, payable quarterly, out of the earnings of the corporation, divided into ten thousand shares of preferred stock of the par value of one hundred dollars each, and three million dollars of common stock, divided into thirty thousand shares, of the par value of one hundred dollars each.

The corporation so to be organized shall also have the right, if so authorized by its charter and by appropriate resolutions of its board of directors, to issue one million dollars in six per cent. first-mortgage bonds, covering all the present and after-acquired real and personal property, assets, effects and franchise of the company and the good will of its business. The bonds so to be issued shall be in denominations of one thousand dollars each, secured by mortgage or trust deed as a first charge upon its property, said bonds to run not less than ten years, and shall contain such provisions for the payment of principal and interest and such other covenants and conditions as its board of directors may approve.

Sixth. For the purpose of more effectually assuring unto the parties of the second part, their nominees or assigns, or the corporation to be organized by them, of the good will of the business of the company and the continued value thereof, — — and — —, the present managing directors and officers of the company, 608 hereby expressly covenant and agree with the parties of the second part, their nominees and assigns, and with the corporation to be organized, its successors and assigns, that they or either of them will, if and so long as thereunto requested by the parties of the second part, their nominees or assigns, or by the corporation

so to be organized, act as managers, or as directors, or as managing directors of the business of such corporation so to be organized, or of such branch thereof as may be delegated to them, if and so long as they may be elected or designated to perform such duties, and at a compensation to be agreed upon by the party or parties and the board of directors of the corporation so to be organized.

Seventh. For the purpose of further assuring unto the parties of the second part, their nominees and assigns, and unto the corporation to be organized pursuant to the terms of this agreement, the good will of the business agreed to be sold, — — — and — — — further severally covenant and agree with the parties of the second part, their nominees and assigns, and with the corporation so to be organized, its successors and assigns, that neither they, nor any of them, will at any time within five years hereafter engage in the business of manufacturing straw paper as principal, or as a member of any firm, or as stockholder, director, trustee, manager, officer, or in any other capacity as connected with any corporation engaged in the manufacture of straw paper in the State of Ohio, Michigan, Indiana, Illinois, Wisconsin, Minnesota, Iowa, Missouri, Nebraska, Dakota.

Eighth. It is understood between the parties hereto that it is the purpose of the parties of the second part, their nominees or assigns, to procure options from certain persons and firms and from other corporations engaged in the manufacture of straw paper, with a view of transferring the options so to be obtained by them or of accepting such options and the properties referred to therein, and subsequently transferring such properties to the corporation to be organized pursuant to the terms of this agreement.

Ninth. It is agreed that bonds and stock of the corporation to be organized as above provided, or the proceeds of the sales of such bonds and stocks, may be issued in part payment for all properties that may be so acquired.

609 *Tenth.* If, and when the parties of the second part, their nominees or assigns, shall have elected to take action under this agreement to the extent of organizing one or more corporations to acquire the property, effects and business of the company at their own cost and expense, the vendors shall forthwith, upon demand of the parties of the second part, their nominees or assigns, authorize and direct the Northern Trust Company, in the city of Chicago, and State of Illinois, to deliver and transfer the deeds of conveyance, bills of sale, shares of stock, and other property, together with such agreements and assurances as may be reasonably required, to the end that the corporation so to be formed shall be vested with the title to said property, assets, shares of stock, effects, agreements and assurances, upon the receipt from the company of a certified copy of resolutions duly passed at a meeting of its board of directors, authorizing such purchase upon the terms of this agreement, and setting apart the shares of stock above provided to be paid, accompanied by a further agreement on its part to pay unto the company the above-specified sum of — dollars in cash within two months thereafter, so that the company may have the oppor-

tunity of procuring the bonds to be printed, issued and sold, for the purpose of procuring the cash payment. The shares of stock to be issued unto the company in payment for the property and effects and for the covenants to be entered into by it, shall be duly allotted to the company by resolutions of the corporation so to be organized at the time of the passage of the necessary resolutions authorizing the purchase of the property of the company, and the shares of stock shall be delivered as soon thereafter as the same can be printed and ready for delivery; meantime the company shall be entitled to interest upon the cash payment provided to be made, and to dividends upon the stock from the day of the delivery of the deeds of conveyance, bills of sale, and other instruments unto the corporation so to be organized.

Eleventh. Attached hereto, marked "Schedule A," and forming part of this agreement, is an itemized list and description of all the tangible property intended to be conveyed hereunder, so far as the same is known to the vendors, but in no event shall the property to be transferred be of a less value or amount than that specified in said list.

610 In witness whereof, the company has caused this instrument to be executed and its official seal to be attached by and pursuant to resolutions of its board of directors and the vendors, and the parties of the second part have hereunto caused their hands and seals to be attached, the day and year first above written.

By _____,
 _____,
 _____,
 _____,
 _____,
 _____,
 _____, [SEAL.]
 [SEAL.]
 [SEAL.]
 [SEAL.]
 [SEAL.]

Signed, sealed and delivered in the presence of—

"SCHEDULE A."

(Referred to in within agreement.)

611 Afterwards, to wit, on the fifteenth day of May, 1896, came Harry W. Dickerman, trustee *et al.*, by their solicitors, and filed in the clerk's office of said court their exceptions to the master's report, which said exceptions are in the words and figures following, to wit:

Exceptions to Master's Report.

UNITED STATES OF AMERICA,
Northern District of Illinois, } ^{ss:}

In the Circuit Court of the United States for the Northern District
of Illinois.

THE NORTHERN TRUST COMPANY and OVID B. JAMES
son, as Trustees, Complainants,
vs.

COLUMBIA STRAW PAPER COMPANY; HARRY W. DICKERMAN, Trustee for the Second National Bank of Rockford, Illinois; Frederick J. Diem, Julius Graham, Freeman J. Graham, Junior; E. P. Hooker, Trustee for the Merchants' National Bank of Defiance, Ohio, and in His Own Behalf, and James C. Richardson, Defendants. } In Equity.

Exceptions taken by the said Harry W. Dickerman, as trustee for the Second National Bank of Rockford, Illinois; Frederick J. Diem, E. P. Hooker, as trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, four of the defendants in the above-entitled cause, to the report of Henry W. Bishop, Esquire, one of the masters of said court, to whom said cause stands referred by the orders of said court, and which report bears date and was filed in the office of the clerk of this court on the 15th day of April, A. D. 1896.

First exception. For that the master hath in and by his said report certified that the material allegations in the original bill in this cause are sustained by proofs: Whereas, one of the material allegations in said original bill was and is as follows, viz: "That all of said one thousand bonds (being all the bonds secured by said mortgage sought to be foreclosed) were duly issued, negotiated and sold, and are now outstanding and valid obligations of the defendant Columbia Straw Paper Company, and the same, with the coupons annexed thereto, have come into the possession of and are now held by a large number of persons, who have become the owners thereof in good faith and for a valuable consideration." Notwithstanding said material allegation was contained in said bill, not one of said bonds or of said interest coupons was produced in evidence before said master, nor was there any testimony taken before him on said reference, nor was or is there any competent evidence in said record before said master, tending to prove who were the holders or owners of any of said bonds or interest coupons when said bill was filed: neither was there any evidence of any bondholder or owner or his agent taken before said master on said reference. And the said defendants, taking these exceptions, apprehend that said master ought to have certified to this court the fact

that there was no legal or valid evidence before him to the effect that said bonds and coupons were outstanding and valid obligations of the defendant Columbia Straw Paper Company, or that the same had come into the possession of, and were at the time said bill of complaint was filed, held by persons who had become the owners thereof in good faith and for a valuable consideration. And these defendants apprehend that the only competent evidence of the said mortgage indebtedness is the bonds secured by said mortgage sought to be foreclosed and the coupons representing the interest thereon.

2d exception. For that the said master in and by his said report hath certified that all of said bonds were duly certified by said The Northern Trust Company, complainant herein, as trustee, to be of the issue of the bonds referred to and described in the mortgage or deed of trust sought to be foreclosed in this cause: whereas, the only testimony proving or tending to prove that said The Northern Trust Company, as trustee, certified said bonds to be of the issue of the bonds referred to and described in said mortgage or deed of trust, is the testimony of one Arthur Heurtley, the secretary of said The Northern Trust Company, found on page 4 of the record of testimony taken by said master and filed with his report; which said testimony of said Arthur Heurtley is as follows:

"Q. This mortgage states that it is executed to secure one thousand bonds of the denomination of one thousand dollars each, executed to the Columbia Straw Paper Company, and that these bonds are to be certified by the Northern Trust Company, one of 613 the trustees named in the mortgage. You may state, if you know, whether these one thousand bonds of the denomination of one thousand dollars each were in fact so certified by the Northern Trust Company.

"A. They were.

"Q. At the time or about the time of the delivery of the mortgage?"

"A. Yes, sir."

Which was all the evidence introduced before said master of the certification by said Northern Trust Company of said bonds, none of which said bonds were introduced in evidence before said master. And these defendants apprehend that the best and only proper evidence of the fact of such supposed certification by said Northern Trust Company would be the certificate itself, as the same is contained (if there is such certificate) on the bonds themselves.

3rd exception. For that the said master hath in and by his said report certified that said Columbia Straw Paper Company made default in redeeming or discharging the one hundred bonds which by the terms of said bonds, and of said mortgage or deed of trust, were to be paid and redeemed on said day by paying therefor the sum of one hundred and ten thousand dollars and accrued interest, or any part of said one hundred bonds: and that on the first day of December, A. D. 1894, the defendant Columbia Straw Paper Company made default by failure to redeem or discharge the one hundred and five bonds referred to in said mortgage or deed of trust, as

provided by the terms thereof and by the said provisions of said mortgage or deed of trust, or any part of said one hundred and five bonds: and that said defendant Columbia Straw Paper Company further made default on said first day of December, A. D. 1893, and on the first day of December, A. D. 1894, respectively, by failing on each of said dates to pay into the sinking fund referred to in said mortgage or deed of trust for the redemption of said bonds the sum of one hundred and ten thousand dollars on each of said dates, together with the interest upon such bonds as had been redeemed on the first day of December, A. D. 1893: and for that the said master further certified that each of said defaults had continued ever since, and still continues, and that none of the payments required to be made by the defendant Columbia Straw Paper Company, as aforesaid, and in which it has so defaulted, has been made by any other person or corporation, nor has any part thereof been paid, although payment thereof had been duly demanded: Whereas, these defendants suggest and show that the only testimony taken

before said master, and the only evidence contained in said
614 record tending to show any such alleged defaults is the testimony of said Arthur Heurtley, a witness called by the complainants, whose testimony is found on pages 5 and 6 of the record of testimony taken before said master, and submitted with his said report; and that said testimony of said Heurtley shows him to have been a mere employee of said Northern Trust Company, and that he had no personal knowledge of the matter about which he testified.

And these defendants further state and show that there is no testimony or evidence of any kind or character taken before said master or contained in the record upon which he based his said report, proving or tending to prove that any demand had ever been made by said Northern Trust Company in writing, for the payment of said bonds hereinabove in this exception mentioned, as provided in said bonds and trust deed or mortgage and that in truth and in fact no demand ever was made by said Northern Trust Company for the performance or payment, so certified by the said master, as hereinabove in this exception mentioned.

And these defendants apprehend that, in order to place said defendant Columbia Straw Paper Company in default, under the terms of said mortgage, for failing to redeem or discharge the said bonds in this exception mentioned, under the terms or provisions of said mortgage or deed of trust and of said bonds it would have been required, after default had been made by said Columbia Straw Paper Company, that demand in writing should have been made for such payment or performance, by said Northern Trust Company three months before the filing of said bill, as provided in article 3, section 2, of said mortgage, in order to make such alleged default ground for filing said bill and for the declaring the principal of said bonds due on account thereof.

And these defendants further apprehend that there could be no default on the part of said defendant Columbia Straw Paper Company in failing to redeem the said bonds in this exception above mentioned, until said complainant The Northern Trust Company

should have caused drawings to be made under its direction, as provided in the 5th clause of the conditions of the bonds themselves, as the same are set forth in the deed of trust or mortgage sought to be foreclosed, and in trust and in fact no such drawings were ever made by said Northern Trust Company complainant, nor is there any evidence before said master tending to prove that such drawings have ever been made.

4th exception. For that the said master hath in and by his said report certified that the said defendant Columbia Straw Paper Company on the 1st day of June, A. D. 1894, made
615 default in the payment of the interest upon the portion of the said bonds which were then outstanding, to wit: on each and every one thereof. And that thereafter and on the 1st day of December, A. D. 1894, the said defendant Columbia Straw Paper Company likewise made default in the payment of the interest upon its said one thousand bonds then outstanding, by failing to pay any of the interest which on that day became due and payable upon its said bonds; and that each of said defaults has ever since continued, and still continues, and that none of the payments required to be made by the defendant Columbia Straw Paper Company, as aforesaid, and in which it has defaulted, have been made by any other person or corporation, nor has any part thereof been paid, although payment thereof had been duly demanded. Whereas, there is no competent evidence taken before said master, nor is there any contained in said record before him, proving that such defaults as so certified by him, in the payment of said interest, have ever been made, or any default in the payment of said interest been made by said Columbia Straw Paper Company whatsoever. And these defendants represent and show that the only testimony tending to prove such alleged default in the payment of said interest was the evidence of the said Arthur Heurtley, who is not an officer, agent or in anywise connected with the defendant Columbia Straw Paper Company, and which evidence is contained in the record of testimony filed with the said master's report on page 6, which was and is in the words and figures following, to wit:

"Q. State whether you know if the interest on these bonds, the interest falling due on the first of January, 1894, was paid?

A. It was not.

Q. How was it December 1st, 1894?

A. It was not paid.

Q. How was it June 1st, 1895?

A. It was not paid.

Q. Has any part of its interest coupons due June 1st, 1894, December 1st, 1894, and June 1st, 1895, been paid?

A. Not that I am aware of.

Q. Should you be aware of it if it had been done?

A. I think so."

And these defendants further represent and show that the interest on said bonds was not payable, by the terms of the bonds or of the coupons representing such interest, nor by the terms of the trust deed or mortgage securing the same, sought to be foreclosed, at the

banking-house of said Northern Trust Company; but said interest and the coupons representing the same were by the terms thereof made payable at the office of said Columbia Straw Paper Company in the city of Chicago, Illinois.

And these defendants further represent and show that there was no testimony taken before said master, nor is there any evidence in the record which has been returned into court with his report, proving or tending to prove that any demand has ever been made by any bondholder or any other person for the payment of interest upon any bond or bonds, as provided in section 4, subdivision (a) of the conditions of said bonds, nor that after any alleged default in the payment of such interest that any demand for such payment was made in writing by the said Northern Trust Company, as provided in paragraph 2 of article 3 of the said deed of trust or mortgage sought to be foreclosed.

5th exception. For that the said master hath in and by his said report failed to point out and certify that the evidence taken before him proved that the said mortgage was executed and delivered, and that the said one thousand bonds secured thereby, with the interest coupons attached thereto, were uttered and issued by said Columbia Straw Paper Company as a material part of an unlawful scheme organized and carried out by the officers, directors and agents of said Columbia Straw Paper Company (who were the same persons who received the said bonds and interest coupons) for the purpose of creating a monopoly or an illegal trust in the manufacture and sale of straw wrapping paper throughout the United States: that preliminary to the organization of said defendant The Columbia Straw Paper Company, its promoters and the persons who afterward assumed control thereof as directors and officers, procured options or conditional contracts of purchase from the owners of 39 paper mills located and in operation in the States of Illinois, Wisconsin, Indiana, Michigan, Ohio, Iowa, Nebraska, Missouri and Kansas; that said thirty-nine paper mills immediately prior to and at the time of the organization of said Columbia Straw Paper Company were manufacturing substantially all the straw wrapping paper then being manufactured in the said nine States above mentioned; and that said territory embraced within the said nine States was substantially the only territory in the United States wherein straw wrapping paper was manufactured in any considerable amount: that the purpose and object of the said persons engaged in said scheme, and who came into the control and management of said Columbia Straw Paper Company, were to place all of said thirty-nine paper mills under one control and management for the sole purpose of acquiring a monopoly of such manufacture and sale of straw wrapping paper, and thereby to increase or control the cost or price thereof to consumers in the markets of the United States, and to control and limit therein the manufacture and production thereof: that said mortgage was made and said bonds were executed and pretended to be sold for the sole purpose of the purchase by said Columbia Straw Paper Company of said thirty-nine paper mills, plants and the business

and good will appertaining thereto respectively: that the evidence taken before said master disclosed said purpose and object on the part of said company and the persons who as directors, agents and officers were in control thereof, in manner following, viz:

First. The mortgage sought to be foreclosed in this cause, and introduced in evidence before said master, contains the record of the meeting of the stockholders of said Columbia Straw Paper Company, and the resolutions passed by them at said meeting, which recite that one Emanuel Stein represented himself to be the holder of options upon certain mills, plants and factories for the manufacture of straw wrapping paper and other kinds of paper, and upon the businesses in which such straw wrapping paper and other kinds of paper are manufactured, of which schedules were submitted with said Stein's written proposition to said company; that said Stein represented himself to be entitled, under the terms of said options held by him, to acquire the absolute title to all such mills, plants and factories and of the several businesses named in such options, upon the terms therein prescribed, upon making the payments thereby provided; that the said Stein had presented to said company a proposition in writing for the sale of said properties, upon his acquisition thereof, together with the said businesses and the good will thereof, upon the terms specified in said written proposition; that it was therefore resolved by said stockholders that said company should purchase from said Stein all said properties, mills, plants, factories and appurtenances, of which schedules were embodied in the written proposition submitted by him to said company and filed with the secretary thereof) also the respective businesses conducted upon said properties and the good will thereof, and all the rights and interests in said properties and in said businesses which said Stein was entitled to acquire under the aforesaid options; that his proposition so set forth was by said stockholders, as expressed in said resolutions, accepted upon conditions that he should secure a good and indefeasible title to all said properties, mills, plants, factories, appurtenances, businesses and good will, and should pay the entire purchase price necessary to secure the same; and upon the further condition that said Stein should enter into a contract with said company in regard to said purchase, satisfactory in form and contents to the board of directors or such officer or officers as they might delegate, and that in payment for said properties, mills, plants, factories, appurtenances, businesses and good will, the said company should pay the said Stein or his nominees the sum of five million dollars as follows: \$1,800 in cash; \$1,000,000 by the issuance and delivery to the said Stein or his nominees of one thousand six per cent. first-mortgage gold bonds of said company, of the denomination of \$1,000 each, being all of the total issue of one million dollars of such bonds, secured by a mortgage as a first lien or charge upon all the rights, properties and interest acquired by the said company from said Stein, and upon all after-acquired properties of said company and its franchises and undertakings, so far as such rights and interests were capable of being legally subjected to the lien of a mortgage; that in

addition to said bonds and cash said Stein should receive the further sum of one million dollars in the preferred stock of said company, and \$2,998,200 in the common stock of said company, with other provisions in said resolutions of said stockholders, as the same were carried out afterwards and contained in the mortgage sought to be foreclosed in this cause and in the said bonds; that the said mortgage or deed of trust sought to be foreclosed in this cause also contains the resolutions of the board of directors of said Columbia Straw Paper Company, passed in pursuance of the said resolutions of the stockholders, and substantially to the same effect; that the mortgage also recites that the said Emanuel Stein and his wife had conveyed all the said real and leasehold properties, all the businesses in operation on said properties, including the good will thereof, and all the trade-marks and trade names thereof, and all the fixtures, machinery, chattels, assets and effects of every kind and description, situated on said properties or included in said options, in pursuance of said resolutions of said stockholders and board of directors, and in performance of the contracts made thereunder between said Stein and said company; that said mortgage also contained the description of said properties in certain schedules describing the respective properties on which were located each of said different paper mills, machinery, appliances, etc., connected therewith; that the evidence taken before said master also contained a sworn copy of the said proposition in writing of said Stein to said company, referred to in said resolutions of said stockholders; that the same is found in the record accompanying said master's report on pages 310 to 315 inclusive; that in and by said written proposition said Stein states that he had options giving to him the privilege of acquiring certain mills, plants and factories for the manufacture of straw wrapping paper and other kinds of paper, a list of which is contained in the schedules annexed, and also certain leasehold properties upon which

619 certain of the mills, plants and factories were situated, of which a schedule was thereto attached; that in addition to the appurtenances of said properties, mills, plants and factories, he proposed to transfer to the company the businesses conducted upon the said properties, together with the good will thereof, and all the rights and interests in the said properties possessed by their then owners; that said proposition contained further provisions, all of which were adopted by said stockholders at the meeting of said stockholders, and also the meeting of the said board of directors without change; that in and by said written proposition of said Stein it appears that thirty-seven different corporations, copartnerships and individuals were the owners of the respective paper mills engaged in the manufacture and sale of straw wrapping paper situated respectively in said nine States, and whose businesses and good will the said Stein proposed to sell and transfer to said Columbia Straw Paper Company for the consideration, amongst other things, of the said one thousand bonds secured by the said mortgage (now sought to be foreclosed in this cause) as a first lien on said real estate and leasehold properties, machinery, businesses and good will thereof;

that there *was* further introduced before the said master the said option contracts of the said Stein, and the same were then and there read before the said master, and withdrawn by said complainants' counsel, to be thereafter by them produced upon any hearing of said cause; that each of said option contracts so held by the said Stein, recited amongst other things, that the owner or owners of each particular paper mill in question, and covered by such option contract, were engaged in the manufacture of straw wrapping paper and merchandise of like character; that such owner was desirous of effecting a sale of the properties, businesses, assets, effects and good will unto a corporation about to be organized by the parties of the second part, whose purpose it was to organize one or more corporations with a capital stock of one million dollars preferred and three million dollars of common stock, and with a total bonded debt secured by mortgage or trust deed of one million dollars; that thereupon such mill-owner agreed to give an option for a certain period of time to the parties of the second part, their nominees or assigns, or to a corporation to be organized by them to purchase all the properties, appurtenances, good will and business of such mill-owner, and to accept in payment therefor a certain sum in cash, a certain amount in preferred stock of such corporation to be organized, and a certain amount in the common stock thereof; that it was further provided in said option contracts that such mill-owner covenanted and agreed with the parties of the second part, and with such corporation so to be organized, and
620 its successors and assigns, that such mill-owner would not at any time within five years thereafter engage in the business of manufacturing straw paper, as principal or as a member of any firm, or as stockholder, director, trustee, manager, officer, or in any other capacity as connected with any corporation engaged in the manufacture of straw paper in the States of Ohio, Michigan, Indiana, Illinois, Wisconsin, Minnesota, Iowa, Missouri, Nebraska and Dakota.

That it was further provided in said option contracts that it was understood between the parties thereto that it was the purpose of the parties of the second part, their nominees and assigns, to procure similar options from others, both persons and firms and corporations engaged in the manufacture of straw paper, with a view of transferring such options, so to be obtained by them, or of accepting such options and the properties referred to therein, and of subsequently transferring such properties to the corporation to be organized pursuant to the terms of such option contracts.

That it was further shown in the testimony taken before said master that the persons to whom said option contracts were originally granted, were Philo D. Beard, afterward president of said Columbia Straw Paper Company, and one Thomas D. Ramsdell, who subsequently, by arrangement with the other parties to said scheme, transferred said option contracts to said Emanuel Stein. That it was further shown in the testimony taken before said master that the members of the law firm of Guggenheimer and Untermeyer, of the city of New York, were amongst the principal pro-

motors of said scheme or combination to get control of said paper mills, and organize a monopoly in the manufacture of straw wrapping paper, as above stated. That on or about the 13th of June, 1892, Samuel Untermeyer, Esquire, one of said firm, wrote a letter to Henry M. Wolf, Esquire, one of the counsel for the complainants in this cause, which letter was introduced in evidence, and is found on pages 341 and 342, inclusive, of the record of testimony submitted with said master's report, and in which the said Untermeyer states to the said Wolf that the said letter would introduce to him (said Wolf) Mr. Philo D. Beard, who was about to organize a consolidation of the manufacturers of straw paper in the West.

And these defendants further specify and show that in the evidence taken before said master and returned into court with his said report, it is and was proven that said Stein, Beard, Guggenheimer and Untermeyer, Charles A. Dupee, Noble B. Judah, Monroe L. Willard and Henry M. Wolf, composing the law firm of Dupee,

Judah, Willard & Wolf, and their associates, caused the said
621 option contracts upon said thirty-nine paper mills, with the respective properties, plants, businesses and good will to be secured, first in the name of said Beard and Ramsdell, and then to be assigned by them to said Stein, and then caused said Columbia Straw Paper Company to be organized, and then caused said Stein to make said proposition in writing to said Columbia Straw Paper Company, and caused the latter to accept the same and execute said mortgage sought to be foreclosed herein, and to agree to deliver said one million dollars of its bonds secured thereby, with the object and purpose of forming a combination of said thirty-nine paper mills, by bringing them all under one and the same control, and of creating a monopoly in the manufacture and sale of straw wrapping paper throughout the United States, and to control the prices and production thereof throughout the United States, contrary to the common law, and in direct violation of the statutes of the State of Illinois, wherein nineteen out of thirty-nine paper mills were situated. That such evidence is contained in the said record of testimony taken before said master, and returned into court with his report, and consists of the following testimony of the respective witnesses on the respective pages of said report or record of said testimony as follows, viz:

The testimony of Emanuel Stein at pages 103, 104, 105, 106, 107, 108, 109, 110, 111, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 142, 143, 144, 145, 146, 147, 150, 151, 153, 154, 155, 156, 157, 158, 159, 160.

The testimony of John B. Sherwood at pages 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 230, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 242, 243, 244, 245, 246, 247, 248, 249, 250, 264, 265, 266, 267, 333, 334, 335.

The testimony of Henry M. Wolf, at pages 341, 342, 345, 346, 351, 352, 353, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 377,

378, 379, 380, 381, 396, 397, 398, 399, 400, 424, 425, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 475, 476, 477, 478.

And these defendants submit that the said evidence hereinabove, in this exception mentioned and pointed out, proved that said mortgage was executed and recorded, and said bonds were uttered and delivered, as an essential part of a scheme or combination to create an unlawful monopoly in the manufacture and sale of straw wrapping paper throughout the United States; and that said mortgage and bonds were and are illegal and void, and are not enforceable.

6th exception. For that the said master hath in and by his said report certified that the principal of said one thousand bonds, with the interest secured by said mortgage sought to be foreclosed herein was, at the date of his said report, due and unpaid; and that he based such finding and certificate on the default of said Columbia Straw Paper Company in failing to redeem or discharge certain of said bonds, and in failing to pay into the sinking fund referred to in said mortgage for the redemption of said bonds certain sums of money, and in making default in the payment of the interest upon said bonds, and in suffering an execution to be sued out against its goods and chattels on the 22d day of January, A. D. 1895, upon a judgment obtained against it by James Flaunegan before George W. Underwood, a justice of the peace in and for the county of Cook and State of Illinois, which said Columbia Straw Paper Company had failed to remove although requested so to do; and that the contention of defendants that the procurement of said judgment was the result of a collusion with said company is not supported by the testimony; whereas these defendants submit that the principal of said one million dollars of bonds will not become due by the terms thereof until the particular lots of bonds to be paid and redeemed shall have been ascertained by drawing to be made under the direction of said Northern Trust Company, one of the complainants herein, as specified in the fifth clause or paragraph in each of said bonds contained, and as the same appears in said mortgage or deed of trust; and that there was no evidence before said master nor in said record that any such drawing had ever been made or requested by said complainants or by any bondholder; and that in truth and in fact no such drawing or drawings were ever made or requested to be made. That the only causes for declaring the principal of said bonds, or of any of them, due, in the absence of such drawing or drawings, mentioned in or conferred by said bonds or mortgage, and which are alleged or claimed by said plaintiffs in their said bill of complaint as grounds or causes for so declaring the principal of said bonds due are the following, viz:

1st. In case said Columbia Straw Paper Company should fail to pay into the sinking fund as provided in said mortgage and bonds, the sums therein specified, and such default should have been continued for the period of three months after demand for such payment in such sinking fund should have been made in writing by said complainant, The Northern Trust Company; and these defendants point out and show that there is no evidence contained in said record before said master, or in the testi-

mony taken by him, that any demand for such payment had been made in writing by said Northern Trust Company to said Columbia Straw Paper Company; and that in truth and in fact no such demand was ever made.

2d. That in case said Columbia Straw Paper Company should make default for a period of three calendar months in the payment of any interest secured by said mortgage, and the bearer or registered holder of any bond or bonds for said interest so in arrear should, by notice in writing to said company, call in the principal moneys secured in said bond or bonds; and these defendants point out and show that there was no evidence before said master in the record of testimony taken by him and returned into court with its said report, that any such notice in writing was ever given to said company by any bondholder, calling in the principal moneys secured by his bonds.

3rd. In case any execution should be levied against any of the chattels or property of said Columbia Straw Paper Company or, (as claimed by said plaintiffs as the proper construction of the provision in question), levied and sued out against any of the chattels or property of said Columbia Straw Paper Company, and the latter should not forthwith, upon such execution being sued out, (or levied and sued out) remove, discharge or pay such execution, then and in either case, hereinabove in this exception mentioned, then in case the trustees in said mortgage (said complainants) should declare the interest owing upon said bonds to be immediately due and payable, they might then enforce the security conferred by said mortgage; that the sole and only ground of said plaintiffs as such trustees in said mortgage, for declaring the principal of all of said bonds to be payable was and is by reason of a judgment having been entered against said Columbia Straw Paper Company in the court of George W. Underwood, justice of the peace of Cook county, Illinois, on the 22d day of January, 1895, in favor of James Flannagan, and execution upon said judgment having been sued out against the property of said company, and said company having failed to forthwith remove, discharge or pay said execution. These defendants point out and show that the facts and circumstances attending the entry of said judgment last mentioned, and the suing out of aid execution and alleged failure of said company to pay and discharge the same, and the action of the trustees in said mortgage (said complainants) in declaring the principal of said bonds to be immediately due and payable, as the same are shown and
624 contained in the testimony taken before said master and appear in the record returned by him into court with his said report, were and are substantially as follows:

That said Guggenheimer, Untermeyer and their copartner, one Marshall, attorneys of New York, were among the promoters of the defendant company and the principal attorneys therefor, from its organization, and caused said Philo D. Beard, (one of the promoters of said company and subsequently the president thereof) in June, 1892, to come to Chicago and employ the law firm of Dupee, Judah, Willard & Wolf to assist in the organization of the defend-

ant company, and to make the Northern Trust Company (for which company the firm of Dupee, Judah, Willard & Wolf were attorneys) the trustee in the mortgage, now sought to be foreclosed; that said Dupee, Judah, Willard & Wolf from that time forward were the attorneys of said Columbia Straw Paper Company in Chicago and the West, and had become the owners of 77,000 dollars of said bonds secured by said mortgage which they owned in said month of January, 1895; that said Guggenheimer, Untermeyer and Marshall, in said month of January, 1895, were the owners of 257,000 dollars of said bonds, which they acquired at the time the same were issued by said company and transferred to said Stein, during all of which period said Guggenheimer, Untermeyer & Marshall had also owned 520,600 dollars par value of the capital stock of said defendant company which they acquired at the same time and under the same arrangement as said bonds, but they had paid no consideration for said capital stock nor did said defendant company ever receive any consideration therefor; that said Beard and his associates and friends, at Buffalo, New York, owned in said month of January, 1895, 288,000 dollars of said bonds; that a short time before said January 22d, 1895, in anticipation of these foreclosure proceedings, said Dupee, Judah, Willard & Wolf formally ceased to act as attorneys for said defendant company, and the law firm of Herrick, Allen & Boyesen, Esquires, of Chicago, were formally retained as such attorneys in their place and stead; that said Ovid B. Jameson, one of the trustees in said mortgage, and one of the complainants in this suit, resided in Indianapolis, Indiana; that in said month of January, 1895, said James Flannagan, the plaintiff in the suit before said George W. Underwood, Esq., such justice of the peace wherein such judgment was rendered against said defendant company, resided in the city of New York and was on such terms with said Samuel Untermeyer, of the firm of Guggenheimer, Untermeyer & Marshall, that said Untermeyer acted for said Flannagan as his attorney-in-fact, by giving the receipt of said Flannagan for certain of said bonds as such attorney-in-fact; that on or about the said 22d day of January, 1895, six interest coupons of 30 dollars each, representing the past-due
625 interest on certain of said bonds owned by said Flannagan were received by said Henry M. Wolf, of said law firm of Dupee, Judah, Willard & Wolf, for collection. That said Wolf immediately delivered said interest coupons to Frank P. Leffingwell, Esq., an attorney-at-law, having an office in the same building with said Dupee, Judah, Willard & Wolf. That said Leffingwell forthwith and on January 22, 1895, commenced suit on said coupons before said George W. Underwood, as such justice of the peace, who issued a summons returnable on January 28, 1895, the shortest time allowed by the laws of Illinois for the return of such summons. That on the same 22d day of January, 1895, the constable to whom said summons was delivered, returned the same to said justice with an endorsement of service thereon upon said Philo D. Beard, the president of said defendant company. That at the hour of five o'clock in the afternoon of said 22d day of January, 1895, said Beard,

as such president, appeared before said justice of the peace, and waived service of process in said suit, entered the appearance of said defendant company and consented to an immediate trial, which was thereupon had, and said justice entered judgment upon said coupons for the sum of 180 dollars and costs of suit. That thereupon the plaintiff's agent (whose name the record of said proceedings, before said justice, does not state, nor is it shown in said testimony, taken before said master) made oath, and execution was immediately issued and placed in the hands of a constable at the hour of five o'clock and twenty-four minutes in the afternoon of said 22d day of January, A. D. 1895. That after said execution was so placed in the hands of said constable he made no demand upon said defendant company, or any of its officers, for the payment of said execution, nor did he levy the same upon the goods and chattels of said defendant company, although there were goods and chattels of many thousand dollars in value belonging to said company, in said city of Chicago, at that time, upon which said execution, if valid, was a first and paramount lien; and said execution was returned to said justice by said constable afterwards indorsed, no part satisfied. That afterwards, and later than half past five o'clock in the evening of said 22d day of January, A. D. 1895, and after business hours, and long after the banks, including said Northern Trust Company, had closed for the day, the said trustees in said mortgage, said Northern Trust Company, and said Jameson, signed a written document, setting forth, that on account of said execution for said 180 dollars having been sued out against the property of said defendant company, and because the latter had failed to forthwith remove, discharge or pay said execution, that said trustees therein and thereby declared the entire principal of said 1,000 bonds, aggregating
626 one million of dollars, together with all interest owing upon said bonds, to be immediately due and payable. That whilst said written document and declaration of said trustees is directed in its caption to said Columbia Straw Paper Company, there is, and was, no testimony taken before said master, nor is there any evidence contained in the record of evidence returned by him into court with his report, that said written document and declaration of said trustees was ever served upon said defendant company, or upon any of its officers, agents or attorneys. That said Wolf, when he received said coupons belonging to said Flanagan, himself selected said Leffingwell as the attorney to bring the suit therefor, and without any correspondence with said Flanagan or directions from the latter to bring suit or substitute another attorney in his stead, and whilst he was himself one of the attorneys for said trustees in said mortgage, the present plaintiffs.

And these defendants submit that the procuring of said judgment, and the immediate suing out of said execution, were procured to be done by said trustees in said mortgage, the plaintiffs herein through their attorneys, for the express purpose of enabling said trustees to declare the principal of said 1,000 bonds to be immediately due and payable, and their taking possession of the mortgaged property and instituting this suit. That said attorneys

of said trustees had the willing aid of the president of said defendant company, in the accomplishment of that end. That in so lending his assistance to that object, said Beard as such president, was acting in violation of his duties as an officer of said defendant company, and was in collusion with said trustees in the said mortgage to bring about the immediate declaration of the principal of said one million dollars, as due and payable. And these defendants submit that the action of said trustees, under the said facts and circumstances shown, in so foreshortening the time of payment of a vast sum of money and declaring the principal of bonds, aggregating a million dollars, to be immediately due and payable, for the failure of the defendant company for the paltry sum of one hundred and eighty dollars, and at a time when said company had not been in such default for an hour after said execution was sued out, and under which none of the property of the company could be levied upon within twenty days, during all of which period said company could have appealed from said judgment as matter of right, all present a case of such inequitable conduct and harsh haste on the part of said trustees as to invalidate their act in so declaring said million dollars of bonds to be immediately due and payable. And these defendants apprehend that said master ought to have certified the above facts in this exception mentioned, to the court in his report.

627 7th exception. For that the master hath in and by his said report certified that the procurement of the judgment of the 22d day of January, A. D. 1895, in favor of James Flanagan and against the Columbia Straw Paper Company, before George W. Underwood, justice of the peace of Cook county, Illinois, was not the result of collusion between the Columbia Straw Paper Company, the trustees and said Flanagan: Whereas, it appears in the report of testimony filed by the master with his report from the testimony of Charles Allen on page 228, the testimony of Charles A. Dupee on pages 226 and 227, the testimony of Frank P. Leffingwell on pages 296 and 297, the transcript of the proceedings before George W. Underwood on pages 14 to 17, inclusive, the testimony of Henry M. Wolf on pages 341, 342, and 464 to 468, inclusive, and the entire testimony of Byron L. Smith, president of the Northern Trust Company, on pages 43 to 55 inclusive, the entire testimony of Arthur Heurtley, secretary of the Northern Trust Company, and especially that on pages 11, 18, 21, 24, 28, 39 and 40, and from the certified copy of proceedings in New Jersey beginning at page 222 of the record of testimony, and of the action of the defendant company in filing its answer confessing all the allegations of the bill of complaint herein, that the procurement of the Flanagan judgment was the result of collusion, and that said proceedings in obtaining said judgment are collusive and fraudulent.

8th exception. For that said master hath in and by his said report certified that the contention of the defendants that the stock of

the defendant company which passed into the hands of Emanuel Stein by virtue of his contract with the company was not finally paid-up stock: Whereas these defendants submit that he should have certified that Emanuel Stein was the mere conduit or agent of the organizers or promoters of the defendant company: that 3,710 shares of the preferred stock and 17,420 shares of the common stock, making in all 21,130 shares of the capital stock of the defendant company, of the par value of \$2,113,000, were never in fact issued to said Stein, but were in fact issued direct to said organizers and promoters without any consideration moving from said promoters to said company, in pursuance of the agreement and understanding of said Stein and said promoters prior to the organization of the defendant company, and without the knowledge and consent of these defendants, as appears from the testimony of said Stein, Wolf, and Sherwood.

9th exception. For that the master hath in and by his said report certified that the said stock (referring to the entire issue of stock of said company) was received by said Stein from said company in fulfillment of his contract with it as fully paid-up stock: Whereas, said master should have reported that said Stein did not, as a matter of fact, receive the entire issue of the stock of said company in fulfillment of his contract with said company: that \$629,000 in the preferred stock of said company and \$1,258,000 of the common stock of said company was issued direct to the owners of the mills, according to the options whereby they agreed to transfer their said mills to said Stein or a corporation to be organized by him; and the balance of the stock of the defendant company, namely: 3,710 shares of preferred and 17,420 shares of common stock were fraudulently and without consideration issued direct, and not through the medium of said Stein, to the organizers and promoters of said defendant company, and without the knowledge and consent of these defendants, who took their stock in said company on the representations of said Stein and the promoters and their agents, that 70 mills would be acquired in exchange for the stock and bonds of the defendant corporation; and that the purchase price of said 70 mills would absorb and take up all said capital stock of four million dollars; whereas in fact, said corporation only acquired 39 mills, as appears from the testimony of Emanuel Stein on pages 97 to 174, inclusive. John B. Sherwood, pages 178 to 338, inclusive, Henry M. Wolf, pages 450 to 464, inclusive.

10th exception. For that the master hath in and by his said report certified that as a matter of law, any question in regard to it (that is, the issuance of the securities of the defendant company) between the stockholders and the company cannot be inquired into in this proceeding: Whereas, the master should have reported that, as the persons holding at the time of the filing of the bill of complaint in this cause the bonds secured by the mortgage sought to be foreclosed are the same persons who promoted and organized the defendant company, and who acquired without consideration \$2,113,000 of the preferred and common stock of the defendant

company, that then the defendant company should be permitted to offset in this suit the indebtedness of each of such persons to it as a stockholder, as against the defendant company's indebtedness to each of said persons as a bondholder. It appears from the report of testimony on pages 196 to 216, inclusive, filed by the master with his report, that the persons who held at the time of the filing of the bill of complaint in this cause the bonds secured by the mortgage sought to be foreclosed, are the identical persons who held at that time \$2,113,000 of the preferred and common stock of the defendant company, which these defendants contend was acquired by said persons from the defendant company without consideration, and is not fully paid-up stock.

11th exception. For that the master hath in and by his said report certified that by reason of the premises, and as provided in said deed of trust or mortgage, the complainants herein have declared the principal and interest owing upon the 1,000 bonds of the aggregate face value of \$1,000,000 to be immediately due and payable, and that they have been requested in writing by the owners and holders of more than one-third of said bonds to enforce the provisions of said deed of trust and the security created thereby. Whereas, said master ought to have found and reported that there was no evidence produced before him, nor is there any evidence to be found in the testimony reported by him, that said trustees, complainants herein, delivered or served such declaration of the principal and interest being due to or upon said defendant, Columbia Straw Paper Company.

12th exception. For that the master hath in and by his said report certified that the said defendant company has been for some time, and is still, insolvent and unable to pay its just debts and liabilities in full. Whereas, said master should have reported that there was no evidence of facts produced before him, nor is there any evidence in the testimony reported by him of any facts from which such conclusion can be drawn.

13th exception. For that the master hath in and by his said report certified that all of the issue of said bonds was negotiated and sold, and is now outstanding and a valid obligation of the defendant Columbia Straw Paper Company. Whereas said master should have reported that said bonds, in the hands of the parties to whom they were issued, and by whom they were held at the time of the filing of the bill of complaint in this cause, were fraudulent and unlawfully issued to the parties who now hold the same, and are not a valid obligation of the defendant Columbia Straw Paper Company.

Wherefore, for and on account of the foregoing reasons, the said Harry W. Dickerman, as trustee for the Second National Bank of Rockford, Illinois, Frederick J. Diem, E. P. Hooker, as trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, except to the said master's

630 report, and humbly appeal therefrom to the judgment of this honorable court.

HARRY W. DICKERMAN,
As Trustee for the Second National Bank of Rockford,
 FREDERICK J. DIEM,
 E. P. HOOKER,
As Trustee for the First National Bank of Ohio
and in His Own Behalf, and
 JAMES C. RICHARDSON,
 By OTTO GRESHAM, *Solicitor.*

JNO. S. COOPER,
Of Counsel for Def'ts so Excepting.

Chicago, May 15, 1896.

(Endorsed :) Filed May 15, 1896. S. W. Burnham, clerk.

Afterwards, to wit: on the eighteenth day of May, 1896, in the December term of said court, 1895, in the record of proceedings thereof in said entitled cause before the Hon. John W. Showalter, circuit judge, appears the following entry to wit:

Order of May 18, 1896.

Entry.

NORTHERN TRUST COMPANY ET AL.,	} In Chancery. 23614.
Trustees,	
<i>vs.</i>	
COLUMBIA STRAW PAPER COMPANY.	

It is ordered by the court that the hearing of the exceptions of Dickerman *et al.* to the master's report be set down for May 30, 1896.

Afterwards, to wit: on the nineteenth day of May, 1896, in the December term of said court, 1895, in the record of proceedings thereof in said entitled cause before the Hon. John W. Showalter, circuit judge, appears the following entry to wit:

Order of May 19, 1896.

Entry.

NORTHERN TRUST COMPANY ET AL.,	} In Chancery. 23614.
Trustees,	
<i>vs.</i>	
COLUMBIA STRAW PAPER COMPANY.	

It is ordered by the court that the hearing of the exceptions of Dickerman *et al.* to the master's report be set down for June 3, 1896.

631 Afterwards, to wit, on the seventh day of July, 1896, there was filed in the clerk's office of said court an opinion by Judge Showalter, which said opinion is in the words and figures following, to wit :

Opinion of the Court.

Opinion.

United States Circuit Court, Northern District of Illinois.

NORTHERN TRUST COMPANY and JAMESON	} Term No., — ; Gen.
<i>vs.</i>	
COLUMBIA STRAW PAPER COMPANY.	} No., —.

SHOWALTER, J. :

In this case the defendant corporation contracted with Stein whereby for certain specified properties which he caused to be transferred to that company, all, or nearly all of the stock of that company was exchanged. Stein afterwards delivered, it is said a large portion of this stock to third parties. There was no express agreement by these parties to pay anything to the Columbia Straw Paper Company in the way of a stock subscription. If the complaint of these defendants be well founded it would simply mean either that the stock should be turned back to Stein or to the company for their benefit, or treated as void. There is no basis in this case for any ruling that the holders of the stock referred to sustain the relation of debtor to the Columbia Straw Paper Company for the price of that stock. This is not a case where a stock liability was incurred by certain persons and afterwards gotten rid of in some way without payment. It might be possible to say in this case that certain of the persons to whom Stein delivered the stock were not entitled to it as against the rights of other persons to whom he delivered other portions of stock, but there is no basis here for declaring an indebtedness by these stockholders to the Columbia Straw Paper Company.

The Columbia Straw Paper Company parted with its capital stock for what was agreed to be the value of that stock. The property which Stein contracted to give and which he did give, or caused to be given to the Columbia Straw Paper Company, was what that company agreed to accept for its stock. In that transaction the Columbia Straw Paper Company was in no way wronged. It can have no action to recover on the theory that the stock has not

been paid for, nor can any discontented stockholder assert
632 such a right for the Columbia Straw Paper Company as against any other stockholder. A quarrel between stockholders concerning the beneficial ownership of stock which has been paid for is one thing—a controversy between a corporation and a stockholder who has not paid such corporation what is due it from him for his stock is another. The case might be different here if the rights of creditors were involved. I do not say that it would be, but under the decisions of some courts it might be. It

is strongly urged here that the property which the company got for its stock under the Stein contract was not a fair equivalent for the stock estimating the latter at its par value. As the case has turned out and in the light of what has happened, this position is doubtless correct; but when the contract was made, and in view of the enterprise then in contemplation, I am not even prepared to say that the estimate put upon the property by these parties was so far out of the way. The important point, as the question arises here, is this: Whatever may have been, in fact, the value of the property turned over to the company for its stock, the company agreed to take it for the stock. The persons interested were the stockholders and there was no dissent on the part of any person concerned from what was then done. Neither any person then holding stock, nor any person who afterwards became a stockholder, by assignment from one who then held stock can now make complaint on behalf of the corporation as against the fairness of that transaction. This I take to be the settled law on that subject.

Much has been said in the course of the argument about looking through forms and going to the substance of what was done. The corporation sold its stock for a price which everybody interested at that time agreed to, and no harm was done or wrong committed either in law or morals. Apart from all the forms adopted by these parties in transacting the business what the whole thing amounts to is this: The owners of the mills wanted additional capital to carry on their business, and desired certain capitalists to join with them and become interested. These capitalists did so, and furnished one million of dollars upon the understanding that a third party should take that money and that mills, and that the business should be continued and carried on, and they and the mill-owners would divide the profits if there should be any. But the men who furnished the money in case the enterprise did not turn out well, were to have, as against the mill owners, a lien for the return of that money upon the mills themselves. After a time the business failed. The persons who furnished the money simply insist upon an enforcement of the lien. The cash was advanced upon this understanding, and there is no offer by the mill-owners to
633 return it. I cannot see how a foreclosure of the mortgage could be helped on the state of facts here.

Even if the circumstances were such as to entitle the mill-owners to repudiate the contract, a tender back of the money received by them would be a necessary condition. As the case stands, I do not see how the foreclosure can be resisted, or how any set-off, as insisted on, is valid or can be held good.

It is urged that the bonds were not produced before the master, and that this constitutes a fatal defect of proof. The production of these bonds was not necessary, as it seems to me, at this stage of the proceeding. The bonds were issued, and a million dollars was paid for them. The form of the bonds, that they are outstanding and that they have not been paid is known. Under the contract these trustees are empowered, it seems to me, to carry on this foreclosure proceeding and have a decree of foreclosure without the

bonds being produced in the first instance. *Teller v. East Tennessee, Virginia & Georgia Railway Co.*, 67 F. R., p. 168, appears to be in point and to indicate the correct practice. It is urged, further, that the Flannigan judgment was obtained by collusion. It is not denied that the company owed Flannigan. It is not denied that the justice of the peace had jurisdiction, or that the judgment is valid, or that the execution issued, or that it was not paid. Assuming the *bona fides* of the mortgage debt here, the insolvency of the company, and its inability to meet its obligations, I see nothing illegal, no collusion in the sense of fraud in the Flannigan judgment. The idea of collusion here is urged in connection with the other proposition that these bondholders owed the company an indebtedness greater than the mortgage debt from the company to them; that it was inappropriate for them to seek to foreclose the mortgage, and fraudulent on the part of the company assuming such indebtedness to it from the bondholders, not to resist the foreclosure. But when one reaches the conclusion that the company was insolvent; that the indebtedness on the bonds was valid, and not subject to any offset, and that a foreclosure was inevitable, the Flannigan judgment ceases to have any feature which would justify a court in saying that it was fraudulent or collusive in any evil sense. I think the exceptions to the master's report should be overruled.

(Endorsed :) Filed July 7, 1896. S. W. Burnham, clerk.

634 Afterwards, to wit: on the twenty-seventh day of July, 1896, in the July term of said court in the record of proceedings thereof, in said entitled cause before the Hon. John W. Showalter, circuit judge, appears the following entry, to wit :

Decree.

UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division, } ss :

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and OVID B. }
Jameson, Trustees, }

vs.

THE COLUMBIA STRAW PAPER COMPANY; HARRY }
W. Dickerman, Trustee for the Second National }
Bank of Rockford, Illinois; Buckstaff Brothers }
Manufacturing Company; Henry S. Carroll, }
for Himself and the Clarksville Paper Com- }
pany; F. J. Diem, Freeman Graham, Jr., }
Julius Graham; E. P. Hooker, Trustee for the }
Merchants' National Bank of Defiance, Ohio, }
and in His Own Behalf, and James C. Richard- }
son, Defendants. }

In Chancery.
Gen. No., 23614.

This cause came on to be further heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was

and is found by the court, and ordered, adjudged, and decreed as follows, viz:

Exceptions to master's report overruled.—1. That the exceptions to the report of Henry W. Bishop, master in chancery, filed herein on or about April 15, 1896, and each of them, be and they hereby are overruled, and that said master's report be and the same hereby is approved and confirmed.

Material allegations of bill true.—2. That the material allegations of the original bill of complaint herein are true.

Execution and delivery of mortgage.—3. That on or about the thirty-first day of December, 1892, the said defendant, The Columbia Straw Paper Company, under and pursuant to resolutions duly adopted by its stockholders and board of directors, duly executed and delivered to the said complain-
635 ants, as trustees, its certain mortgage, or deed of trust, dated the thirty-first day of December, 1892, in words and figures as shown in the copy thereof forming part of the bill of complaint herein, and which deed of trust is shown in the report of Henry W. Bishop, master, filed herein on or about April 15, 1896, and thereby granted, bargained, sold, assigned, transferred and conveyed unto said complainants and their successors and assigns, as trustees, all and singular the properties and premises, rights, privileges, appurtenances, immunities and franchises, rents, issues and profits, present and future, described in said deed of trust.

Mortgage given to secure bonds.—4. That said mortgage, or deed of trust, was so executed and delivered to secure the payment of the principal and interest of an issue of bonds of said Columbia Straw Paper Company called its six per cent. first-mortgage gold bonds, which said bonds numbered one thousand (1,000), and were each for the sum of one thousand dollars (\$1,000), and were payable to the bearer, or registered owner thereof, in gold coin, and bearing interest at the rate of six per cent. (6 %) per annum from the first day of December, 1892, payable half yearly, which interest on each of said bonds was evidenced by eighteen (18) coupons thereto attached, each providing for the payment of a half year's interest, and which said bonds and coupons are more particularly described in said trust deed.

Mortgage including properties in Illinois.—5. That among the properties included and specifically described in said mortgage, or deed of trust, were certain properties situated in the State of Illinois, and hereinafter described.

Bonds valid outstanding obligations.—6. That all of said 1,000 bonds were duly issued, negotiated and sold, and were, at the time of the filing of the bill of complaint herein, and now are outstanding and valid obligations of said defendant company, and that the same, with the coupons annexed thereto, came into the possession of, and are now, with the exception of the coupons maturing in 1893, held by a large number of persons who have become the owners thereof for a valuable consideration.

Defaults of defendant company in paying off bonds, interest, &c.—7. That on the first day of December, 1893, the Columbia

Straw Paper Company made default in redeeming or discharging the one hundred bonds which by the terms of said bonds and of said mortgage or deed of trust, were to be paid and redeemed on said day by paying therefor the sum of one hundred and ten thousand dollars (\$110,000) and accrued interest, or any part of said one hundred bonds; that on the first day of December, 1894, the defendant Columbia Straw Paper Company made default by failing to redeem or discharge the one hundred and five bonds referred to in the said mortgage or deed of trust, as provided by the terms thereof, and by the provisions of said mortgage or deed of trust, or any part of said one hundred and five bonds; and the said defendant Columbia Straw Paper Company further made default on said first day of December, 1893, and on the said first day of December, 1894, respectively, by failing, on each of said dates, to pay into the sinking fund referred to in said mortgage or deed of trust, for the redemption of said bonds, the sum of one hundred and ten thousand dollars (\$110,000), on each of said dates, together with the interest upon such bonds as had been redeemed on the first day of December, 1893; that the said defendant Columbia Straw Paper Company, on the first day of June, 1894, made default in the payment of the interest upon the portion of the said bonds which were then outstanding, to wit: on each and every one thereof; that thereafter, and on the first day of December, 1894, the said defendant Columbia Straw Paper Company, likewise made default in the payment of the interest upon its said one thousand (1,000) bonds then outstanding, by failing to pay any of the interest which on that day became due and payable upon its said bonds; that each of the said defaults has ever since continued and still continues, and that none of the payments required to be made by the defendant Columbia Straw Paper Company as aforesaid, and in which it has defaulted, has been made by any other person or corporation, nor has any part thereof been paid, although payment thereof has been duly demanded.

Execution against company on justice's judgment.—8. That on or about the twenty-second day of January, 1895, an execution was duly sued out against the chattels and property of said defendant, Columbia Straw Paper Company, upon a judgment obtained against said defendant by James Flanagan before George W. Underwood, justice of the peace, Cook county, Illinois, and the said defendant, Columbia Straw Paper Company, has failed to remove, discharge or pay such execution, although duly requested so to do.

Declaration of maturity of bonds.—9. That by reason of the premises, the complainants herein, prior to the filing of the bill herein, duly declared the principal and interest owing upon the said one thousand (1,000) bonds to be immediately due and payable, and that said principal and interest thereupon became so due and payable.

Amount due on bonded debt.—10. That there is now due and owing upon the said bonds the sum of one million dollars (\$1,000,000), together with interest thereon, according to their terms and the terms of said coupons, from the first day of De-

ember, 1893, said amount being, in the aggregate, at this date, the sum of eleven hundred and sixty-five thousand and forty-nine dollars (\$1,165,049).

637 Equities with complainants, mortgage a valid lien.—11.

That the equities herein are with the complainants and against the defendants and each and all of them, and that the said mortgage, or deed of trust, was a valid conveyance for the purpose therein mentioned, of the property, rights, privileges and franchises therein mentioned and described, and was and is, except as to the two properties sold, as hereinafter stated, a good and valid lien upon all the said property, rights, privileges and franchises mentioned and described in said deed of trust.

Facts as to possession.—12. That shortly prior to the filing of the bill herein said defendant Straw Paper Company was in possession of the premises and property specified in said mortgage, or deed of trust, (excepting the properties sold, as hereinafter stated) including a large amount of personal property in the nature of tools, supplies, material, etc., located at the various properties covered by said mortgage, or deed of trust, but that just before said bill was filed said complainants, as trustees, as aforesaid, took possession thereof (excepting said sold properties and also excepting the Dayton, Ohio, property), and afterward turned over to the receiver herein, George P. Jones, such possession.

Properties sold before suit.—13. That it is admitted by the complainants and defendant Straw Paper Company, in open court, that the following of the properties mentioned in said trust deed had, prior to the beginning of this suit, been sold and disposed of by said defendant company, with the consent of the said complainants and in accordance with the terms and provisions of said mortgage, or deed of trust, to wit: the two known as the New Philadelphia (at Blakesfield, Ohio) and Springfield, Illinois, mills, same being hereinafter described, and that the proceeds of said sales were turned over to said Northern Trust Company, trustee, to be held under the provisions of said trust deed.

14. That it is admitted by the complainants and the defendant Straw Paper Company, in open court, that the mills at Clarksville, Missouri; Elmwood, Illinois; Enon, Mad River, Ohio; Lyndon, Illinois; La Fayette, Indiana, and the mill formerly located at Xenia, Ohio, were heretofore either partially or entirely destroyed by fire, and that various amounts of insurance have been collected by and paid to either George P. Jones, the receiver herein, or said Northern Trust Company, trustee, as aforesaid, on account of the losses caused by such partial or total destruction.

Moneys in hands of N. T. Co.—15. That it is admitted by the complainants and the defendant Straw Paper Company that there is now in the hands of said Northern Trust Company, trustee,
638 the sum of twenty-eight thousand three hundred seventeen and $\frac{24}{100}$ dollars (\$28,317.24), which sum of money consists chiefly of the proceeds of the sales above mentioned and a part of the proceeds of the insurance above mentioned, and, subject to the decree heretofore made herein in favor of Anna H. Snyder, admin-

istratrix, if such decree be finally sustained, either in whole or in part, on appeal, and subject to any valid claims thereon of said trust company, was, and is, by the terms and provisions of said mortgage trust deed, pledged for, and in equity should be applied to, the payment of said mortgage debt, and interest thereon, and of the expenses of the trust created by said mortgage.

Moneys in hands of receiver, his liabilities.—16. That it is admitted by George P. Jones, receiver herein, that he now has in his hands, as such receiver, the sum of five thousand dollars (\$5,000), or thereabouts, which sum has been made up partly of mill rents collected by said receiver, and partly of moneys borrowed by said receiver, under the sanction of this court, and partly of insurance moneys hereinabove mentioned, but that the debts and liabilities of said receiver, in the shape of receiver's certificates and otherwise, amount to the sum of thirty-one thousand, five hundred dollars (31,500), or thereabouts, besides some unpaid attorneys' fees, and such further amount as may be allowed said receiver herein, in addition to what he has already drawn.

Moneys and properties should be applied and sold to satisfy debt and expenses.—17. That the moneys in the hands of George P. Jones, as receiver herein, and of said Northern Trust Company, as trustee, as aforesaid, and the said property, rights, privileges and franchises covered by and subject to said mortgage trust deed should be, so far as money, applied, and, so far as other property and rights, privileges and franchises, sold, to and for the payment and satisfaction of said bonded debt, and the costs and expenses of said trust and of the proceedings for the foreclosure of said trust deed, including trustees', receivers', solicitors' and masters' fees, and receivers' indebtedness and certificates, unless such debts, costs and expenses be paid by said straw paper company by a short day to be fixed by the court.

Greater part of Illinois properties in Sangamon county.—18. That it is admitted now in open court by the complainants and said defendant, The Columbia Straw Paper Company, that the greater part of said properties, so far as the same are located in said State of Illinois, is situated in the county of Sangamon, in said State of Illinois.

639 It is therefore ordered, adjudged and decreed by the court, as follows:

Defendant ordered to pay debt.—19. That the said defendant, The Columbia Straw Paper Company, pay, or cause to be paid, into the registry of this court, within ten (10) days from the entry of this decree, the amount of money hereinbefore found and adjudged to be due upon the bonds and coupons aforesaid, together with interest thereon at the rate of five per cent. (5 %) per annum from the date of this decree to the date of such payment.

May use moneys in hands of trustee and receiver for such payment.—20. That the said straw paper company, for the purpose of enabling it to make such payment, may apply to the court for so much of the funds in the hands of the receiver herein and said Northern Trust Company, trustee, as aforesaid, respectively, as may

be proper and equitable after making suitable provision for the payment of the costs, fees and expenses hereinbefore specified.

Order for sale as to Illinois, decrees as to other States.—21. That in default of such payment the said mortgaged property, including all rights, privileges and appurtenances, so far as located in State of Illinois, be sold as hereinafter directed, and that said trustees, complainants, be at liberty to proceed, in or by ancillary proceedings, or otherwise, as they may be advised, to procure, in all the other States in which any part of said mortgaged property is located, decrees for the sale thereof, including all rights, privileges and appurtenances.

Place of sale.—22. That said Illinois properties hereinbefore described, including all rights, privileges and appurtenances, be sold by George W. Dupee, Esq., of Chicago, Illinois, for cash, at public auction, to the highest bidder, or bidders at the main door of the county court house of Sangamon county, Illinois, at Springfield, the county-seat of said county, the court hereby finding that the greater part of said Illinois properties is situated in said Sangamon county. Said George W. Dupee being hereby appointed a special commissioner of this court to execute this decree at such sale, said properties shall be offered separately and in combinations of any two or more less than the whole and as a whole.

Notice of sale.—23. That said special commissioner shall give notice of the time, place and terms of such sale by publication, at least once in each week for four successive weeks prior to such sale, in some newspaper printed, regularly issued, and having a general circulation in said Sangamon county, and State of Illinois, and in such other newspapers as said special commissioner may think advisable, and copies of such notice may be mailed by said
640 special commissioner to such persons as he may think best; the first publication of any such notice to be at least thirty days prior to the sale thereby advertised. Said special commissioner may begin such publication, and said complainants may prosecute proceedings for decrees in other States before the expiration of ten (10) days herefrom at the risk of payment during that time.

Adjournment.—24. That said special commissioner may, from time to time, continue or adjourn any sale so advertised by him without other notice than verbal announcement by some officer, agent or attorney, made at the time and place fixed for such sale.

Use of bonds & coupons as purchase-money, sale subject to confirmation.—25. That any bid or bids at such sale may be paid either in cash or in the said mortgage bonds and the coupons thereof which matured prior to the beginning of this suit, such bonds and coupons to be, respectively, taken as cash for such dividend or distributive share as they would, under this decree, respectively, be entitled to from the bid or bids made and accepted at such sale, but such sale shall be subject to confirmation by this court; but a sufficient amount of such bid or bids shall be paid in cash to cover the costs, expenses, allowances and receivers' liabilities and certificates hereinafter mentioned.

Deposits on bids.—26. Said special commissioner may require from any bidder at such sale such payment or deposit, either in cash or in bonds, at the time of such bidder's bid, as he may see fit.

Certificates of sale.—27. Said special commissioner shall execute and deliver the usual certificate or certificates of sale of the property sold to the purchaser or purchasers thereof, and shall file duplicate or duplicates of such certificate or certificates, for record in the counties, respectively, in which the properties sold are situated.

Distribution of proceeds.—28. Out of the proceeds of the sale hereinabove directed, subject to the right of the court to reserve so much thereof as it may see fit for future expenses of the receivership herein, said special commissioner shall pay the costs of this suit, together with the costs and expenses of executing this decree and making sale as hereinabove ordered, all outstanding receiver's certificates and unpaid receivership debts, such debts, however, to be approved by the court, and allowances and compensation to solicitors, trustees and receivers, such allowances and compensation, however, to be fixed by the court, and out of the remainder the amount found due as above on said bonded indebtedness with interest as such, and remainder shall be sufficient therefor, and shall hold any balance thereover, subject to the further order of
641 the court, with leave to any person interested, whether a party hereto or not, to apply to the court for such order in regard to such balance, whether of distribution or otherwise, as he may think equitable.

Deeds and possession of no redemption.—29. Upon the expiration of fifteen months from the date of such sale, if any property so sold shall not have been redeemed, as provided by the law of Illinois, the defendants herein, and all persons holding or claiming under them, or any of them, since the commencement of this suit, shall stand forever barred and foreclosed of all right and equity of redemption in and to the property so sold; and in case the property therein mentioned is not redeemed as aforesaid, upon production to said special commissioner of any certificate of purchase aforesaid, by the purchaser, or his, or its heirs, successors or assigns, said special commissioner shall make, execute and deliver to such holder of such certificate a good and sufficient conveyance of the property described, or intended to be described, in such certificate, and further, that upon the execution of such conveyance the grantee or grantees in such deed, their heirs, successors or assigns, have possession of the property conveyed in such deed, and that any of the parties to this cause who shall be in possession of said property, or any part thereof, and every person who may have come into such possession under them, or any of them, since the commencement of this suit, shall deliver possession of and surrender such property to such grantee or grantees, their heirs, successors or assigns, as the case may be, upon production of such deed of conveyance.

Re death, &c., of special commissioner.—30. In case of the death, absence from this district, or refusal or inability to act of said

George W. Dupee, such person as the court may hereafter appoint for that purpose shall act in his place and stead hereunder.

Lien in other States not affected hereby or by sale hereunder.—31. This decree and order of sale, and any sale made pursuant thereto, of any property in Illinois, shall not affect the lien of said mortgage, or deed of trust, except upon that portion of said mortgaged properties which shall be sold under this decree, and shall not prejudice any suit or proceedings, whether ancillary or otherwise, now pending, or which may hereafter be brought, for the foreclosure of said mortgage, or the enforcement of its provisions as to any of the mortgaged property not included in the order of sale herein made.

Personal property to be sold with plant.—32. Said special commissioner shall, at the sale hereinabove directed, sell all of the personal property covered by said mortgage and located at or connected with any plant disposed of at such sale, and not heretofore disposed of, with such plant, but in the notice of sale it shall be sufficient, without giving a detailed inventory of the personal property so to be sold, to describe the same in substance as personal property, including tools, materials, supplies, merchandise, etc.

And to be redeemable with same.—33. If personal and real property be sold together, such personalty shall be redeemable with said realty, the same as though it were a part thereof.

Accountings of trustee & receiver reserved, as also distributions of moneys in their hands.—34. The court reserves for its future consideration and direction the matter of accountings in the premises by said complainant trustees and the receiver herein, and also the manner in which the moneys remaining from time to time in the hands of said trustees and receiver shall be applied to payment of the costs, fees, expenses and indebtedness aforesaid.

Power to require conveyances reserved.—35. The court also reserves the right, if such right it has, at any time hereafter to require said trustees and said defendant, The Columbia Straw Paper Company, to execute and deliver to any purchaser or purchasers, of any part of said mortgaged property, whether such property be located in said State of Illinois or in some other State, or be sold under this decree, or under the decree of some other court, or to the heirs, successors or legal representatives of such purchaser or purchasers, such conveyance or conveyances as to the court may seem necessary or proper, and to make any and all such orders or decrees in regard to such conveyances as to the court may seem necessary or proper; whether or not the court has such right is reserved for its future consideration.

Reports by special commissioner.—39. Said special commissioner shall make reports from time to time, of his acts and doings hereunder.

Description of New Philadelphia property.—40. The property hereinabove mentioned as the New Philadelphia mill property is situated in Tuscarawas county, Ohio, and is described as follows, to wit: Outlot numbered thirty-five (35), in Blakesfield, as distin-

guished on the recorded plat thereof, containing two and ninety one-hundredths (2.90) acres.

Description of Springfield property.—41. The property hereinabove mentioned as the Springfield, Illinois, mill property is situated in Sangamon county, Illinois, and is described as follows, to wit: Lot fourteen (14) to twenty-one (21), both inclusive, and the west half of lot twenty-two (22), in Bullock's addition to the city of Springfield.

Description of Illinois property to be sold.—42. The property, rights, privileges and appurtenances situated in the State of Illinois, and hereinabove decreed to be sold, are described as follows, to wit: The following-described real estate, in Whiteside county, to wit:

643 Rock Falls. Beginning at a point on the north line of River street, in the village (now city) of Rock Falls, one hundred and forty-three (143) feet easterly from the intersection of the said north line of River street with the west line of Grove street, thence easterly on said north line of River street four hundred and sixty (460) feet, more or less, to a point two and one-half ($2\frac{1}{2}$) feet east of where the west line of lot three (3) in block four (4) in said Rock Falls, if continued across River street, would strike the south line of block "B," thence northerly on a line at right angles with said south line of block "B," eighty (80) feet, to the north line of block "B," thence westerly along said north line four hundred and sixty (460) feet more or less, to a point in a line running through the point of beginning at right angles with said north line of River street, thence southerly eighty (80) feet to the point of beginning, being a part of said block or lot "B" in Rock Falls, and part of the northeast fractional quarter of section twenty-eight (28), in township twenty-one (21) north, range seven (7) east of the fourth principal meridian.

And also that part of the north embankment of the main race of Augustus P. Smith, lying between the east and west lines of the above-described tract of land if extended northerly across said race and embankment, except a small part thereof heretofore deeded by said Smith to Henry F. Batcheller by deed, dated August 15, 1892, and recorded in Book No. 64, page 28, among the records of said county.

Also a water power of twenty-four hundred (2,400) inches of water under a six (6) foot head, as the dam of the Sterling Hydraulic Company now exists, or its equivalent in power in case said hydraulic company or its assigns should raise said dam.

The above-described lands, premises and water power are subject and liable to like covenants, agreements, conditions, stipulations and reservations as are contained, by reference, in three certain deeds thereof to the Church Paper Company, dated respectively July 30, June 30 and November 28, 1891, and being recorded respectively in Book 130, on page 108, Book 130, on page 109, and Book 127, on page 172, of the land records of said county, so far as the same are applicable to said lands, premises and water power.

Lyndon. Also hydraulic lot number four (4) in Mill addition to the town of Lyndon.

Also a piece of land extending east and west one hundred (100)

feet, and north and south twenty-six (26) feet, and situate on the south side of the race from the land last above described and
 644 directly in front of and opposite thereto, the east and west lines respectively, of both of said tracts, being on the same lines.

Also beginning at the northwest corner of hydraulic lot number three (3) in Mill addition to said Lyndon; thence southerly along the west line of said lot to a point on the prolongation easterly of the south line of the paper mill brick building as it now stands on hydraulic lot number four (4) in said Mill addition; thence easterly at right angles to the west line of said lot three (3) twenty-five (25) feet; thence northerly and parallel with said west line of lot three (3) to the north line of said lot three (3); thence westerly along said north line to the place of beginning.

Also the following-described real estate in Whiteside county, Illinois, to wit:

Lyndon: Commencing at a stake on the southwest fractional quarter ($\frac{1}{4}$) of section fifteen (15), in township twenty (20) north, range five (5) east of the fourth principal meridian, located on the east line of Mill street, in Mill addition to the town of Lyndon, in Whiteside county, as now platted, two (2) chains and eight (8) links south of the intersection of the south line of Commercial street with the east line of said Mill street; thence running south five (5) chains and fifty-two (52) links on the east line of said Mill street to a point in the center of Warner street, were the same extended east of said Mill street; thence east seven (7) chains and twenty-four (24) links; thence north five (5) chains and fifty-two (52) links; thence west seven (7) chains and twenty-four (24) links to the place of beginning, containing four (4) acres, more or less.

Also a water power equal to two thousand (2,000) inches of water under a six (6) foot head, said water power being created by the dam and works of the Lyndon Hydraulic and Manufacturing Company, at Lyndon, in said county, and being the same water power conveyed to the Church Paper Company by the Valley Paper Company, by deed dated June 30, 1891, recorded among the land records of said county, in Book 117 of Records, on page 527.

Also the following-described real estate in Whiteside county, Illinois:

Sterling: Lot eight (8) and part of lot nine (9) in Sterling hydraulic lands in Whiteside county, Illinois, described as follows, to wit:

Commencing on the north wall of the Sterling Hydraulic Company's race two hundred and twenty-three and one-half (223 $\frac{1}{2}$)
 645 feet westerly from the center of the west sill of said company's bulkhead, being fifty (50) feet west of the southwest corner of the tract of land conveyed to Thomas Hunt; thence northerly, parallel with the west line of said Thomas Hunt's to the south line of Wallace street, in Dement & Mason's addition to Sterling; thence westerly along the south line of Wallace street fifty (50) feet; thence southerly parallel with said first line to said company's north race wall; thence easterly along the north race wall fifty (50) feet

to the place of beginning, being the same lot that is now platted and recorded as lot eight (8) of said hydraulic company's lands in the northeast fractional quarter ($\frac{1}{4}$) of section twenty-eight (28), township twenty-one (21) north, of range seven (7) east, north of Rock river.

Also a water power of one thousand (1,000) inches of water under a six (6) foot head.

Also a water right of way south of said race twenty (20) feet wide, for a tail-race and waste-water race to Rock river.

Also a strip twenty-five (25) feet wide off the east side of hydraulic lot No. nine (9), being west of and adjoining said lot No. eight (8).

Also the following-described lots, pieces or parcels of land situated in the city of Elmwood, county of Peoria and State of Illinois, and known and described as follows, to wit:

Elmwood: Commencing at a point in the south line of Poplar street in said city of Elmwood, in said county, four hundred and seventeen and one-half ($417\frac{1}{2}$) feet east of the northeast corner of block "B B," in said town (now city) of Elmwood, as laid out by William J. Phelps, according to a plat filed in the office of the recorder of said Peoria county, in Book "N A," pages 16 and 17; running thence south eighty (80) feet, thence west one hundred and fifty (150) feet, thence south one hundred and sixty (160) feet, thence east two hundred and eighty-three (283) feet and two (2) inches, thence north two hundred and forty (240) feet to the south line of Poplar street; thence west one hundred and thirty-three (133) feet and two (2) inches, to the place of beginning, including all of lots twelve (12) and thirteen (13) in block "D D," and the south half ($\frac{1}{2}$) of lots one (1), two (2) and three (3) in block "C C" in said subdivision; also those parts of Rose and Sycamore streets, now vacated in said subdivision, as are included in the above description, all situated in the west half ($\frac{1}{2}$) of the southwest quarter ($\frac{1}{4}$) of section eight (8), township nine (9) north, range five (5) east of the fourth principal meridian, in said county of Peoria.

Also the following-described lots, pieces or parcels of land situated in the city of Pontiac, county of Livingston and State of Illinois, and known and described as follows, to wit:

Pontiac: Beginning at a point on the east line of the west half ($\frac{1}{2}$) of the southwest quarter ($\frac{1}{4}$) of section twenty-two (22), township twenty-eight (28) north, range five (5) east of the third principal meridian, fifty (50) links south of the north line of Washington street, in the city of Pontiac; thence west with the course of said street ten (10) chains, thence south seven (7) chains to the center of the Vermillion river, thence up the river along its center to the Chicago and Alton Railroad lands; thence northeasterly along the line of said railroad lands to the intersection with the east line of said tract, thence north about seven (7) chains to the place of beginning—containing about seven (7) acres; also lots seven (7), eight (8), nine (9), ten (10), eleven (11) and twelve (12), in block

twenty (20), and lot nine (9) in block twenty-one (21), all in Fell's addition to said Pontiac, county of Livingston and State of Illinois.

Also the following-described real estate in La Salle county, Illinois, to wit:

A tract of land near the village of Dayton, in said La Salle county, in the northeast quarter (N. E. $\frac{1}{4}$) of section thirty-two (32), township thirty-four (34) north, range four (4) east of the third principal meridian, described as follows, to wit:

Beginning at a point sixty (60) feet northwesterly from the northwest corner of the foundation of the old Stadden mill on the east bank of the feeder to the Illinois and Michigan canal, in the northwest fraction of the northeast quarter (N. E. $\frac{1}{4}$) of section thirty-two (32) aforesaid, thence southwesterly along the east bank of said feeder thirty (30) rods, thence east to Fox river, thence northeasterly along the west bank of said river thirty (30) rods, thence westerly to the place of beginning—containing two (2) acres, more or less; also one-sixteenth of the water which flows in Fox river, equal to 47-horse power, more or less.

Also the following-described real estate in La Salle county, Illinois, to wit:

Marseilles: The west thirty (30) feet of lot twelve (12), all of lot thirteen (13), and the east twenty (20) feet of lot fourteen (14), in

Water block, in the Marseilles Land and Water Power
647 Company's addition to Marseilles, in La Salle county, Illinois, also described as "Commencing at a point on the south side of a thirty (30) foot street on the south side of the north head race, three hundred and sixty-five (365) feet westerly along said road from the northeast corner of Rickord & Company's flouring mill; thence westwardly along said road one hundred and fifty (150) feet; thence southerly to tail-race; thence easterly one hundred and fifty (150) feet on tail-race to the southwest corner of Augustus Adams & Sons' lot; thence northerly to the place of beginning," and also all right, title and interest in and to a certain water lease, bearing date July 29, 1868, made and executed by the said Marseilles Land and Water Power Company to Jacob P. Black, said lease being for the term of ninety-nine (99) years from the date thereof.

Also the following-described real estate in La Salle county, Illinois, to wit:

Marseilles: All of lot seven (7), and the east forty (40) feet of lot six (6), in Water block, in the Marseilles Land and Water Power Company's addition to Marseilles, in La Salle county, Illinois.

Also the following-described real estate in La Salle county, Illinois, to wit:

Streator: A tract of land containing three and seventy-eight one-hundredths (3.78) acres, described as follows, to wit: Commencing three hundred and seventy-six (376) feet south by thirty-four and one-half ($34\frac{1}{2}$) degrees east of the northwest corner of the southwest quarter (S. W. $\frac{1}{4}$) of the southeast quarter (S. E. $\frac{1}{4}$) of section twenty-six (26), township thirty-one (31) north, range three (3) east of the third principal meridian, thence north fifty-seven and one-half ($57\frac{1}{2}$) degrees east, four hundred and twenty-four (424) feet, thence in a

southeasterly direction, at right angles with the last line, three hundred (300) feet to the land occupied by the Chicago, Alton & St. Louis Railroad Company as a right of way, thence south fifty-seven and one-half ($57\frac{1}{2}$) degrees west, on the line of the railroad land, five hundred and fifty (550) feet, to the center of the Vermilion river; thence in a northwesterly direction at right angles to said last line, along the center of said river, three hundred (300) feet; thence north fifty-seven and one-half ($57\frac{1}{2}$) degrees east, one hundred and twenty-six (126) feet to beginning.

Also, the following tract, to wit: To get starting point, commencing at the northwest corner of the southwest quarter (S. W. $\frac{1}{4}$) of the southeast quarter (S. E. $\frac{1}{4}$) of section twenty-six 648 (26) aforesaid, thence run south thirty-four and three-quarter ($34\frac{3}{4}$) degrees east, three hundred and seventy-six (376) feet, thence south thirty-two and one-half ($32\frac{1}{2}$) degrees east, three hundred and fifty (350) feet, to the center of the Chicago, Alton & St. Louis railroad, thence south sixty-three and one-half ($63\frac{1}{2}$) degrees east, thirty (30) feet; then commencing at this point run south sixty-three and one-half ($63\frac{1}{2}$) degrees east, one hundred and fifty-four (154) feet; thence north seventy-six and three-quarters ($76\frac{3}{4}$) degrees east, two hundred and fifty (250) feet, thence south eighty-one (81) degrees east, three hundred and twelve (312) feet, thence north eight and one-half ($8\frac{1}{2}$) degrees west, four hundred forty-seven (447) feet, thence south sixty and one-quarter ($60\frac{1}{4}$) degrees west, three hundred and eighteen (318) feet; thence south fifty-seven and one-half ($57\frac{1}{2}$) degrees west, four hundred thirty-two (432) feet to said starting point, containing three and sixty-two one-hundredths (3.62) acres.

Also, the following-described real estate in Winnebago county, Illinois, to wit:

Rockford: A part of the north part of the south half ($\frac{1}{2}$) of the southwest quarter (S. W. $\frac{1}{4}$) of section twenty-six (26) township forty-four (44) north, range one (1) east, described as follows:

Commencing where the north line of said south half intersects the middle of Seminary street, formerly Prospect street; thence southwesterly along the center of said street four (4) chains and thirty-three (33) links; thence west thirteen (13) chains and fifty (50) links, more or less, to Rock river; thence upstream along said river five (5) chains and thirty-four (34) links, more or less, to the north line of said south half; thence east eleven (11) chains and sixty (60) links, more or less, to the place of beginning, also all right to have Sayer street opened as mentioned in one or more of the deeds hereinafter referred to, excepting, however, the acre conveyed to Mary E. Colwell, October 8, 1868, by deed recorded in Book 72 of Deeds, page 368, in the office of the recorder of Winnebago county, Illinois, also one and twenty-nine one-hundredths (1.29) acres conveyed on the same day to Susan F. Colwell by deed recorded in the same book on page 369; also excepting the land conveyed to the Chicago, Madison & Northern Railroad Company by deed recorded in the office of said recorder, in Book 127 of Deeds, page 115.

Also the following-described real estate situated in the city of Rockford, county of Winnebago and State of Illinois, to wit:

Rockford: Lots five (5) and six (6) in the south block of 649 the plat of Rockford Water Power Company's lots in said city, west of Rock river.

Also, the certain strip of land lying south of the south line of said lots five (5) and six (6) in said south block of the Rockford Water Power Company's lots west of Rock river, which said strip is bounded as follows, to wit: On the north by the south line of said lots five (5) and six (6), on the east by a continuation southerly of the east line of said lot five (5) to a point one hundred and eighty-one (181) feet from the southerly line of Mill street, on the west by a continuation southerly of the west line of said lot six (6) to a point one hundred and sixty-nine and seven-tenths (169.7) feet from the southerly line of said Mill street and on the south by a line connecting the south ends of the east and west lines above named.

Also a part of lot E, as shown in the recorded plat of the west part of the northwest quarter of section twenty-seven (27) and the southwest part of the southwest quarter ($\frac{1}{4}$) of section twenty-two (22), township forty-four (44) north, range one (1) east of the third principal meridian. Said part of said lot E being described as follows: Commencing at the northwest corner of said lot E, thence south on the west line thereof four hundred and twelve and thirteen one-hundredths (412.13) feet, thence southeasterly five hundred and thirty-one and eight-tenths (531.8) feet (parallel with the northerly line of said lot E) to the east line of said lot E, thence north on said east line four hundred and twelve and thirteen one-hundredths (412.13) feet to the northeast corner of said lot E; thence northwesterly on the northerly line of said lot E five hundred and thirty-one and ninety-six one-hundredths (531.96) feet to the place of beginning, containing five (5) acres.

Also, twelve hundred twenty-thousandths ($\frac{12000}{1000000}$) of all the water in Rock river in accordance with and subject to the provisions of a certain deed from the Rockford Water Power Company to Levi Rhoades and Isaac Utter, dated June 26, 1866, and recorded in said Winnebago county on July 20, 1886, in Book 67 of Deeds, at page 426.

Also, four hundred twenty-thousandths ($\frac{4000}{1000000}$) of all the water in Rock river in accordance with and subject to the provisions of a certain deed from David L. Bartlett and wife and John Bartlett to said Levi Rhoades and Isaac Utter, dated February 23, 1872, and recorded March 1, 1872, in said Winnebago county, in Book 81 of Deeds, at page 215.

Also the following-described real estate situated in the county of Sangamon and State of Illinois, to wit:

650 Riverton: The southwest part of the southeast quarter (S. E. $\frac{1}{4}$) of section nine (9), and the northwest part of the northeast quarter (N. E. $\frac{1}{4}$) of section sixteen (16), township sixteen (16) north, range four (4), west of the third principal meridian, bounded as follows:

Beginning on the right or east bank of the Sangamon river at the

marginal corner of said quarter sections, and running thence in a southeasterly direction along the right or east bank of said Sangamon river, with the meanders thereof, thirteen and thirty one-hundredths (13.30) chains to the center of the east end of the iron bridge across said river, thence the following course, being the courses and distances along the traveled road from said bridge to the town of Riverton, viz: North $49\frac{3}{4}^{\circ}$ east, one and thirty-nine one-hundredths (1.39) chains; north 24° east, one and eighty one-hundredths (1.80) chains; north $21\frac{1}{2}^{\circ}$ west, two (2) chains; north 24° west, two and seventy one-hundredths (2.70) chains; north 6° west, five and twenty one-hundredths (5.20) chains, and north $27\frac{1}{2}^{\circ}$ east, five (5) chains to a stake on the north side or bank of a small brook or ravine; thence in a northwesterly direction down the center of said brook or ravine seven and thirty one-hundredths (7.30) chains to its mouth or inlet into the big branch running westerly through said town of Riverton to said river; thence westerly down the center of said branch to its mouth in the right bank of said river; thence up the right bank of said river, with the meanders thereof, seven and forty-eight one-hundredths (7.48) chains to the place of beginning, containing nine and eighty-four one-hundredths (9.84) acres, excepting, however, all coals and minerals under the surface of said tract.

Also, the following-described real estate in Rock Island county, Illinois:

Rock Island: 'That part of lot nineteen (19), in the southwest fractional quarter ($\frac{1}{4}$), north of Rock river, in section fourteen (14), township seventeen (17) north of range two (2), west of the fourth (4th) principal meridian, as follows: Bounded on the south and east by the north or main channel of Rock river, on the north and east by the right of way of the Rock Island and Peoria Railroad Company, on the north and west by the canal of the Rock River Navigation and Water Power Company, on the west by the east line of land owned by Bailey Davenport; also 2,100 inches of water to be measured and drawn from said canal as specified in a deed from the National Paper Company to James Frank Robinson, conveying the said premises, dated June 5, 1884, and filed for record July 5, 1884.

651 Also the following-described real estate in Kendall county, Illinois, to wit:

Yorkville: A part of lot three (3) of block five (5) in Black's addition to Yorkville, in Kendall county, Illinois, said part being described as follows, to wit: Commencing on the north line of Hydraulic avenue sixty-six (66) feet east of the southwest corner of said lot three (3); thence east along the south line of said lot three (3) four hundred (400) feet, thence north at right angles with the south line of said lot three (3) to the south, bank of Fox river; thence westerly along the south bank of said river to a point sixty-six (66) feet east of the northwest corner of said lot three (3); thence south, parallel to the west line of said lot three (3) to the place of beginning, including one-half of the water power and dam across Fox river.

Also the following-described lands in Kendall county, Illinois, to wit:

Yorkville and Bristol: One undivided half ($\frac{1}{2}$) part of a part of the north fraction of the northwest fractional quarter of section thirty-three (33) in township thirty-seven (37) north of range seven (7) east of the third principal meridian, described as follows, to wit: Commencing forty-four (44) links east and south, six (6) degrees west, four (4) chains and ninety (90) links, from the northeast corner of block twenty-two (22) in the town of Bristol and four (4) chains north of high-water mark in Fox river, running thence east on a line parallel with said Fox river, thirty (30) rods; thence south six (6) degrees west, sixteen (16) rods to Fox river to the north bank thereof; thence west along the north bank of Fox river, thirty (30) rods; thence north, six (6) degrees east, sixteen (16) rods to the place of beginning, containing three (3) acres of land, more or less.

Also the following-described real estate, to wit:

A part of lot three (3) in block five (5) Black's addition to the village of Yorkville, Kendall county, Illinois, and part of the northwest quarter (N. W. $\frac{1}{4}$) of section thirty-three (33) in township thirty-seven (37) north of range seven (7) east of the third principal meridian, described by courses and distances as follows, to wit: Commencing at a point which is four hundred and sixty-six (466) feet east from the southwest corner of said lot three (3) and at the southeast corner of premises formerly owned and occupied by Charles J. Black and Lucius Clark, and on the north line of Hydraulic avenue and running thence easterly along the north line of Hydraulic avenue, and north line of the Fox River Valley railroad, eleven (11) chains and eighty-five (85) links, to lands formerly owned by James

McClellan, thence north, along the line of said land one (1) 652 chain, more or less, to the south bank of Fox river, thence westerly along the south bank of Fox river to the northeast corner of said premises formerly owned and occupied by said Black and Clark, to a point opposite the place of beginning; thence south on the line of said premises, formerly owned and occupied by said Black and Clark, one (1) chain, more or less, to the place of beginning, containing one (1) and sixty-four one-hundredths ($\frac{64}{100}$) acres, more or less, and upon which said premises were situated the Fox River Company's paper mill buildings, also one undivided half part of the water power, including the undivided half part of the dam across Fox river and known as the J. P. and E. A. Black water power on said Fox river, at Yorkville, Kendall county, Illinois.

Also the following-described real estate in the city of Vandalia, in the county of Fayette, and State of Illinois, to wit:

Vandalia: The west half of outlet thirty-nine (39) and that part of outlet thirty (30) described as follows, viz: "Beginning at the northwest corner of said outlet and running thence east two hundred and seventy-two and one-fourth ($272\frac{1}{4}$) feet; thence south two hundred and forty (240) feet; thence west two hundred and seventy-two and one-fourth ($272\frac{1}{4}$) feet; thence north to the place of beginning."

Also that part of outlet thirty-five (35) described as follows, viz:

"Commencing at a point in the center of Gallatin street, two hundred and seventy-two and one-fourth ($272\frac{1}{4}$) feet east of the west line of said outlot, and running northeasterly (variation fifty-four (54) degrees and fifteen (15) minutes east) to the south line of the right of way of the St. Louis, Vandalia & Terre Haute railroad; thence southwesterly along said south line of said right of way to the west line of said outlot, thence south to the southwest corner of said outlot, thence east two hundred and seventy-two (272) feet to the place of beginning.

Also the following-described real estate situated in the town of St. Charles, county of Kane and State of Illinois, to wit:

St. Charles: Part of the east fraction of the southwest quarter (S. W. $\frac{1}{4}$) of section twenty-seven (27) township forty (40) north, range eight (8) east of the third (3rd) principal meridian, described as follows, to wit:

Commencing at a point sixty (60) feet westerly of and in a line with the north line of Walnut street, from the southwest corner of block two (2) of the original town of St. Charles, aforesaid, on the east side of Fox river, thence northerly and parallel with the east line of First street, of said town, one hundred and ten (110) feet, thence westerly and parallel with the north line of Walnut street to Fox river, thence down said river to a point which would be in the north line of Walnut street were the same extended westerly to said river, thence easterly to the place of beginning, thence southerly parallel with the east line of First street, to intersect with Fox river, thence up said river to a point which would be in the north line of Walnut street, were the same extended westerly to said river; thence easterly to the place of beginning.

Together with six hundred (600) square inches of water to be taken out of the race which runs through the above-described premises at that spot where the paper mill now stands.

Also all the following-described real estate in North Joliet in Will county, State of Illinois, to wit:

Joliet: Lots three (3) four (4) and five (5) in block thirty-six (36) and lot one (1) in block thirty-seven (37) together with all interest in the land between said lots five (5) and one (1). (Connected with a leasehold. See below.)

Joliet: Also all leasehold interest and estate, and all right, title and interest of any kind, which said straw paper company has ever had or acquired in or to lots two (2) and three (3) in block thirty-seven (37) in North Joliet, in Will county, Illinois, together with all improvements thereon, and in or to any and all leases and agreements or renewals thereof, covering or relating to said lots or the improvements thereon, or any power connected therewith. (Connected with a freehold. See above.)

Together with all the rights, privileges and appurtenances belonging or in anywise appertaining to said properties, or to the business heretofore conducted thereon, or in connection therewith, and all improvements situated on said freehold properties, or connected therewith, or with said defendants' business, and all the plant, tools, equipments, material, machinery and chattels of every kind, whether

fixed or movable, at any time owned by said defendant Straw Paper Company and situated on or connected with said properties or the business heretofore conducted thereon, and all rents, issues and profits thereof.

All questions of any decree or decrees against the defendants or any of them personally for costs, or against said straw paper company for any deficiency herein, are hereby reserved for future consideration and adjudication by the court.

654 And thereupon the defendants, Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois, F. J. Diem, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, pray an appeal to the United States circuit court of appeals for the seventh circuit, which appeal is allowed upon condition that said defendants, or any or either of them, execute and file an appeal bond in the penal sum of five hundred dollars, conditioned according to law, on or before the tenth day of September, A. D. 1896, provided however, said appeal and said appeal bond shall not operate as a supersedeas.

Afterwards, to wit: on the fifth day of August, 1896, came Harry W. Dickerman, trustee of the Second National Bank of Rockford, Illinois; F. J. Diem, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, by their solicitor, and filed in the clerk's office of said court their petition for appeal, which said petition is in the words and figures following, to wit:

Petition for Appeal.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and OVID B. JAMESON, Trustees,	}
vs.	
COLUMBIA STRAW PAPER COMPANY and HARRY W. DICKERMAN,	}
Trustee of the Second National Bank of Rockford, Ill.; F. J.	
Diem, E. P. Hooker, Trustee for Merchants' National Bank of	
Defiance, O., and in His Own Behalf, and James C. Richardson.	

Come now Harry W. Dickerman, trustee of the Second National Bank of Rockford, Illinois, F. J. Diem, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, by Otto Gresham, their solicitor, and pray an appeal from the decree entered in the above-entitled cause

655 on the 27th day of July, 1896, and that a transcript of the record and of the proceedings and papers on which said judgment was made and rendered duly authenticated, may be sent to the United States circuit court of appeals for the seventh circuit herewith; and said Harry W. Dickerman, trustee of the Second National Bank of Rockford, Illinois, F. J. Diem, E. P. Hooker, trus-

tee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, file their assignment of errors, and a bond conditioned for the faithful prosecution of said appeal.

HARRY W. DICKERMAN,

Trustee of the Second National Bank of Rockford, Ills.,

F. J. DIEM,

E. P. HOOKER,

*Trustee for Merchants' National Bank of Defiance,
Ohio, and in His Own Behalf, and*

JAMES C. RICHARDSON,

By OTTO GRESHAM, *Solicitor.*

(Endorsed :) Filed Aug. 5, 1896. S. W. Burnham, clerk.

656 On the same day, to wit: the 5th day of August, 1896, came Harry W. Dickerman, trustee, *et al.* by their solicitor, and filed in the clerk's office of said court their assignment of errors, which said assignment of errors are in words and figures following, to wit:

Assignment of Errors.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and OVID B. JAMESON, Trustees,)
vs.

COLUMBIA STRAW PAPER COMPANY and HARRY W. DICKERMAN,)
Trustee of the Second National Bank of Rockford, Ill.; F. J.)
Diem, E. P. Hooker, Trustee for Merchants' National Bank of)
Defiance, O., and in His Own Behalf, and James C. Richardson.)

Come now Harry W. Dickerman, trustee of the Second National Bank of Rockford, Illinois, F. F. Diem, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, by Otto Gresham, their solicitor, and for their assignment of errors in the above-entitled cause, say that there is manifest error in the record of the proceedings had in the circuit court, as follows, to wit:

First. The court erred in striking from the files, on the motion of the complainants, the cross-bill filed by the defendants, Harry W. Dickerman, trustee, and others.

Second. The court erred in overruling the exceptions and each of them of the defendants, Harry W. Dickerman, trustee, and others to the master's report, and in finding that the equities of the case are with the complainants.

Third. The court erred in refusing to enlarge the powers of the receiver so as to authorize the receiver to take possession of the books, papers, records, documents and muniments of title of the defendant company.

657 *Fourth.* The court erred in refusing to permit the defendants Harry W. Dickerman, trustee, *et al.* to amend their an-

swer by the amendments to said answer tendered for the purpose of showing that the organization of the Columbia Straw Paper Company and the execution of the mortgage by the defendant company to the Northern Trust Company and Ovid B. Jameson, was in pursuance of a scheme for the purpose of organizing a trust contrary to the laws of the State of Illinois and the statutes of the United States.

Fifth. The court erred in not dismissing the bill filed by the complainants, The Northern Trust Company and Ovid B. Jameson, trustees, praying for the foreclosure of the mortgage sought to be foreclosed in this cause, for the reason that no default was shown which, by the provisions and the terms of the mortgage, would entitle the complainants to the foreclosure thereof.

Wherefore, Harry W. Dickerman, trustee of the Second National Bank of Rockford, Illinois, F. F. Diem, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, pray that the order and judgment and decree in the above-entitled cause in the circuit court of the United States for the northern district of Illinois, northern division, be in all things reversed.

HARRY W. DICKERMAN,
Trustee Second National Bank of Rockford, Ills.,
F. J. DIEM,
E. P. HOOKER,
Trustee Merchants' National Bank of
Defiance, Ohio, and in His Own Behalf,
JAMES C. RICHARDSON,
By OTTO GRESHAM, Solicitor.

(Endorsed:) Filed Aug. 5, 1896. S. W. Burnham, clerk.

658 On the same day, to wit, the 5th day of August, 1896, came Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois, as principal, and George L. Woodruff and John B. Sherwood as sureties; and filed in the clerk's office of said court an appeal bond; which said appeal bond is — the words and figures following, to wit:

Appeal Bond.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and OVID B. JAMESON, Trustees,	}
<i>vs.</i>	
COLUMBIA STRAW PAPER COMPANY and HARRY W. DICKERMAN, Trustee, et al.	

Know all men by these presents that we, Harry W. Dickerman trustee for the Second National Bank of Rockford, Illinois, as prin

cipal and George L. Woodruff of the city of Rockford, State of Illinois, and John B. Sherwood of the city of Indianapolis, State of Indiana, as sureties, are held and firmly bound unto the Northern Trust Company and Ovid B. Jameson, trustees, in the sum of five hundred dollars, to be paid to the said Northern Trust Company and Ovid B. Jameson, trustees, to which payment well and truly to be made, we bind ourselves jointly and severally, and each of our successors, heirs, executors and administrators jointly and severally to these presents :

Whereas, the above-named Harry W. Dickerman, trustee of the Second National Bank of Rockford, Illinois, F. F. Diem, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf and James C. Richardson have prosecuted their appeal to the circuit court of appeals of the United States, for the seventh circuit to reverse the decree rendered on the 27th day of July, 1896, in the above-entitled suit by the circuit court of the United States for the northern district of Illinois.

Now, therefore, the condition of this obligation is such that if the above-named Harry W. Dickerman, trustee for the Second
659 National Bank of Rockford, Illinois, F. F. Diem, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf and James C. Richardson shall prosecute said appeal to effect and answer all damages and costs that may be adjudged or awarded against them if they shall fail to make good their plea, then this obligation to be void ; otherwise in full force.

Sealed with our seals and dated this third day of August, A. D. 1896.

HARRY W. DICKERMAN, [SEAL.]
Trustee Second National Bank of Rockford.

HARRY W. DICKERMAN. [SEAL.]

GEORGE L. WOODRUFF. [SEAL.]

JOHN B. SHERWOOD. [SEAL.]

STATE OF ILLINOIS, }
Winnebago County, } ss :

George L. Woodruff, being first duly sworn, on oath states that he is worth in personal property and in good real estate more than the sum of five hundred dollars, all free and clear of any incumbrances and over and above any and all exemptions. And this affiant further states that he is the same George L. Woodruff as the one who signs the cost bond in the matter of the appeal to the circuit court of appeals of the United States in the 7th district in the case of Northern Trust Company and Ovid B. Jameson, trustee, vs. Columbia Straw Paper Company.

GEORGE L. WOODRUFF.

Subscribed and sworn to before me this 3d day of August, A. D. 1896.

WILLIS M. KIMBALL,
Notary Public.

[SEAL.]

Approved Aug. 5, 1896.

W. A. WOODS, Judge.

(Endorsed :) Filed Aug. 5, 1896. S. W. Burnham, clerk.

660 Afterwards, to wit: on the twelfth day of August, in the July term of said court, 1896, in the record of proceedings thereof in said entitled cause, appears the following entry by the direction of Hon. William A. Woods, circuit judge.

Order: Leave to File Amendment to Assignment of Errors.

Entry.

THE NORTHERN TRUST COMPANY and OVID B. JAMESON, Trustees,	} In Chancery.
vs.	
THE COLUMBIA STRAW PAPER COMPANY, HARRY W. Dickerman, et al.	

This cause coming on to be heard on the motion of the defendants, Harry W. Dickerman, trustee of the 2nd National Bank of Rockford, Illinois, F. J. Diem, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, for leave to amend the assignment of errors herein, upon consideration whereof, it is hereby ordered that the said defendants may forthwith amend the assignment of errors heretofore filed herein on the 6th day of August, 1896, and the amendment is now filed.

661 On the same day, to wit: the twelfth day of August, 1896, came Harry W. Dickerman, trustee, et al., and by leave of court first had and obtained, filed in the clerk's office of said court their amendment to assignment of errors, which said amendment to assignment of errors are in words and figures following, to wit:

Amendment to Assignment of Errors.

Circuit Court of the United States for the Northern District,
Northern Division.

THE NORTHERN TRUST COMPANY and OVID B. JAMESON, Trustees,	}
vs.	
THE COLUMBIA STRAW PAPER COMPANY, HARRY W. DICKERMAN, Trustee of the 2nd National Bank of Rockford, Illinois, et al.	

Come now Harry W. Dickerman, trustee of the 2nd National Bank of Rockford, Illinois, F. J. Diem, E. P. Hooker, trustee for

the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, by Otto Gresham, their solicitor, and for their amendment to their assignment of errors in the above-entitled cause, say that there is manifest error in the record of the proceedings had in the circuit court, as follows, to wit:

Sixth. That the court erred in overruling the 1st exception filed by said defendants to the master's report.

Seventh. The court erred in overruling the 2d exception filed by the defendants to the master's report.

Eighth. The court erred in overruling the 3d exception filed by the defendants to the master's report.

Ninth. The court erred in overruling the 4th exception filed by the defendants to the master's report.

Tenth. The court erred in overruling the 5th exception filed by the defendants to the master's report.

Eleventh. The court erred in overruling the 6th exception filed by the defendants to the master's report.

662 *Twelfth.* The court erred in overruling the 7th exception filed by the defendants to the master's report.

Thirteenth. The court erred in overruling the 8th exception filed by the defendants to the master's report.

Fourteenth. The court erred in overruling the 9th exception filed by the defendants to the master's report.

Fifteenth. The court erred in overruling the 10th exception filed by the defendants to the master's report.

Sixteenth. The court erred in overruling the 11th exception filed by the defendants to the master's report.

Seventeenth. The court erred in overruling the 12th exception filed by the defendants to the master's report.

Eighteenth. The court erred in overruling the 13th exception filed by the defendants to the master's report.

Nineteenth. The court erred in refusing to permit Charles A. Miller to become a party defendant therein, and to plead, answer or demur to the original bill.

Twentieth. The court erred in overruling the motion to vacate the order striking the cross-bill from the files.

Twenty-first. The court erred in entering the decree of foreclosure and sale herein on July 27th, 1896.

Wherefore, Harry W. Dickerman, trustee of the Second National Bank of Rockford, Illinois, F. J. Diem, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson pray that the decree in the above-entitled cause of the circuit court of the United States for the northern district of Illinois, northern division, be in all things reversed.

HARRY W. DICKERMAN,

Trustee, et al.,

By OTTO GRESHAM, *Their Solicitor.*

(Endorsed :) Filed Aug. 12, 1896. S. W. Burnham, clerk.

663

Clerk's Certificate.

NORTHERN DISTRICT OF ILLINOIS, } ss :
Northern Division,

I, S. W. Burnham, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings in the matter of the intervening petition of Charles A. Miller, and the intervening petition and cross-bill of Harry W. Dickerman, trustee of the Second National Bank, of Rockford, Illinois, Buckstaff Brothers Manufacturing Company, Henry S. Carroll, for himself and the Clarksville Paper Company, F. J. Diem, Freeman Graham, Jr., Julius Graham, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf and James C. Richardson, in the cause wherein The Northern Trust Company and Ovid B. Jameson are complainants, and The Columbia Straw Paper Company *et al.* are defendants, as the same appears from the original and substituted record and files of said court now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and [SEAL.] affixed the seal of said court, at my office in Chicago, in said district, this eighteenth day of August, 1896.

S. W. BURNHAM, *Clerk.*

664

Citation.

In the Circuit Court of the United States for the Northern District,
 Northern Division.

NORTHERN TRUST COMPANY and OVID B. JAMESON, Trustees,	}
vs.	
THE COLUMBIA STRAW PAPER COMPANY; HARRY W. DICKERMAN, Trustee of the Second National Bank of Rockford, Ill.; F. J. Diem; E. P. Hooker, Trustee for Merchants' National Bank of Defiance, Ohio, and in His Own Behalf, and James C. Richardson.	}

To the Northern Trust Company and Ovid B. Jameson, trustees,
 Greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals for the seventh circuit, to be holden at Chicago thirty days after the date hereof, pursuant to an appeal which has been allowed by the circuit court of the United States for the northern district of Illinois, northern division, from its final decree in a suit wherein The Northern Trust Company and Ovid B. Jameson, trustees, are complainants and The Columbia Straw Paper Company, Harry W. Dickerman, trustee of the Second National Bank of Rockford, Illinois, F. J. Diem, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in

his own behalf, and James C. Richardson, are defendants, and wherein said Harry W. Dickerman, trustee for the Second National Bank of Rockford, Illinois, F. J. Diem, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, are defendants, and you are appellee, to show cause, if any there be, — the decree rendered against the said appellants as in the said appeal — should not be corrected, and why speedy justice should not be done to the parties in that behalf.

665 & 666 Witness the Honorable William A. Woods, judge of the United States circuit court for the northern district of Illinois, this fifth day of August, in the year of our Lord one thousand eight hundred and ninety-six.

WM. A. WOODS, *Judge*. [SEAL.]

Service of this writ is hereby acknowledged this sixth (6th) day of August, 1896.

THE NORTHERN TRUST COMPANY, *Trustee*,
 OVID B. JAMESON, *Trustee*,
 By DUPEE, JUDAH, WILLARD & WOLF,
Their Attorneys.

DUPEE, JUDAH, WILLARD & WOLF,
Solicitors for Above Trustees.

667 At a regular term of the United States circuit court of appeals for the seventh circuit, begun and held at the United States court-rooms, in the city of Chicago, in said seventh circuit, on the seventh day of October, 1895, of the October term, in the year of our Lord one thousand eight hundred and ninety-five, and of our Independence the one hundred and twentieth year.

And afterwards, to wit: on the nineteenth day of August, 1896, in the October term, aforesaid, came the appellants, by their counsel, Mr. Otto Gresham and Mr. Robert K. Welsh, and filed in the clerk's office of said court their appearance, which said appearance was in the words and figures following, to wit:

United — Circuit Court of Appeals for the Seventh Circuit, October Term, 1895.

HARRY W. DICKERMAN, Trustee, ET AL.	} No. 344.
<i>vs.</i>	
NORTHERN TRUST COMPANY, Trustee, ET AL.	

The clerk will enter *my* appearance as counsel for the appellants.
 OTTO GRESHAM AND
 ROBERT K. WELSH.

NOTE.—Must be signed by a member of the bar of the United States circuit court of appeals for the seventh circuit. Individual and not firm names must be signed.

Endorsed: Filed Aug. 19, 1896. Oliver T. Morton, clerk.

668 And afterwards, to wit: on the twenty-second day of August, 1896, in the term last aforesaid, came the appellees, by their counsel, Mr. Charles A. Dupee, Mr. Noble B. Judah, Mr. Monroe L. Willard and Mr. Henry M. Wolf, and filed in the clerk's office of said court their appearance, which said appearance was in the words and figures following, to wit:

United States Circuit Court of Appeals for the Seventh Circuit,
October Term, 1896.

HARRY W. DICKERMAN, Trustee, ET AL.

vs.

THE NORTHERN TRUST COMPANY, Trustee, ET AL.

} No. 344.

The clerk will enter my appearance as counsel for the appellees.

CHARLES A. DUPEE.

NOBLE B. JUDAH.

MONROE L. WILLARD.

HENRY M. WOLF.

NOTE.—Must be signed by a member of the bar of the United States circuit court of appeals for the seventh circuit. Individual and not firm names must be signed.

Endorsed: Filed Aug. 22, 1896. Oliver T. Morton, clerk.

669 And afterwards, to wit: on the twenty-seventh day of August, 1896, in the term aforesaid, came the appellants, by their counsel, Mr. John S. Cooper, and filed in the clerk's office of said court their appearance, which said appearance was in the words and figures following, to wit:

United States Circuit Court of Appeals for the Seventh Circuit,
October Term, 1895.

HARRY W. DICKERMAN, Trustee, ET AL.

vs.

NORTHERN TRUST CO. and OVID B. JAMESON, Trustee, etc.

} No. 344.

The clerk will enter my appearance as counsel for the appellant.

JOHN S. COOPER.

NOTE.—Must be signed by a member of the bar of the United States circuit court of appeals for the seventh circuit. Individual and not firm names must be signed.

Endorsed: Filed Aug. 27, 1896. Oliver T. Morton, clerk.

670 And afterwards, to wit: on the twenty-fifth day of September, 1896, in the October term aforesaid, came the appellants, by their counsel, Mr. Otto Gresham, Mr. John S. Cooper and Mr. Robert K. Welsh, and filed their motion for enlargement of the record, which motion is in the words and figures following, to wit:

United States Circuit Court of Appeals for the Seventh Circuit.

HARRY W. DICKERMAN, Trustee, ET AL., Appellants,	} No. 344.
<i>vs.</i>	
THE NORTHERN TRUST COMPANY and OVID B. JAMESON, Trustee, Appellees.	

Motion for Enlargement of the Record.

The appellees, Harry W. Dickerman, trustee of the Second National Bank of Rockford, Illinois, F. F. Diem, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson respectfully show unto your honors, that it appears from the record herein that the order appointing George P. Jones receiver was not made a part of the transcript of the record in the proceedings in the court below

And appellants would further show unto your honors that it appears from the record herein (page 437) that there was introduced in evidence and before the court below a certified copy of the proceedings in the chancery court of New Jersey, in the matter of the petition of Solomon Marx for the appointment of a receiver of the Columbia Straw Paper Company.

Appellants further show that it is essential to a just understanding of this cause that the order appointing the receiver by the court below, together with a copy of the proceedings in the chancery court of New Jersey for the appointment of a receiver for the Columbia Straw Paper Company, should be made and brought into and become a part of the record in this court.

Appellants therefore move the court to make a proper order directing that the clerk of the United States circuit court for
671 the northern district of Illinois, northern division, do further certify into this court a copy of the order appointing George P. Jones receiver of the Columbia Straw Paper Company, and a copy of the transcript of the proceedings in the chancery court of New Jersey, wherein a receiver was appointed for the Columbia Straw Paper Company, and which was introduced in evidence before the master in the court below.

And they will ever pray.

HARRY W. DICKERMAN,
Trustee, et al., Appellants,
By OTTO GRESHAM,
JOHN S. COOPER, AND
ROBERT K. WELSH.

And afterwards, to wit, on the twenty-fifth day of September, 1896, in the term and year last aforesaid in the record of proceedings thereof in said entitled cause before the Hon. John W. Showalter, circuit judge, appears the following entry, to wit:

Before Hon. John W. Showalter, Circuit Judge.

In the United States Circuit Court of Appeals for the Seventh Circuit.

HARRY W. DICKERMAN, Trustee, ET AL. }
vs. } 344.
 NORTHERN TRUST COMPANY, Trustee, ET AL. }

Come now the appellants, by Otto Gresham, their solicitor, and filed their petition herein; and also come the appellees by their solicitor; and on motion of appellants it is ordered that the clerk of the circuit court of the United States for the northern district of Illinois, northern division, do make out and certify under the hand and seal of said court as a part of the record in said cause No. 344, to a copy of the order appointing George P. Jones receiver of the Columbia Straw Paper Company, copy of the order substituting Hoyne, Trumbull & O'Conner as solicitors for the said receiver and transcript of the certified copy of the proceedings in the
 672 chancery court of New Jersey in the matter of the petition of Solomon Marx for the appointment of a receiver of the Columbia Straw Paper Company, and upon the receipt of which the clerk of this court is ordered to cause the same to be printed and made a part of the record.

And afterwards, to wit, on the twenty-ninth day of September, 1896, in the October term aforesaid, there was filed in the office of the clerk of said court an additional transcript of record, which said additional transcript of record was in the words and figures following, to wit:

Additional Transcript of Record.

In the United States Circuit Court of Appeals, for the Seventh Circuit, October Term, A. D. 1895.

HARRY W. DICKERMAN, Trustee, ET AL., Appellants, }
vs. }
 THE NORTHERN TRUST COMPANY and OVID B. JAMESON, } No. 344.
 Trustee, etc., Appellees. }

Mr. Otto Gresham, Mr. Robert R. Welsh, Mr. John S. Cooper, counsel for appellants.

Mr. Charles A. Dupee, Mr. Noble B. Judah, Mr. Monroe L. Willard, Mr. Henry M. Wolf, counsel for appellee.

Appeal from the circuit court of the United States for the northern district of Illinois, northern division.

Additional transcript of record filed September 29, 1896.

Additional printed record filed October 5, 1896.

OLIVER T. MORTON, *Clerk.*

673 In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1895.

HARRY W. DICKERMAN, Trustee, ET AL., Appellants,	} No. 344.
<i>vs.</i>	
THE NORTHERN TRUST COMPANY and OVID B. JAMESON, Trustees, etc., Appellees.	

Mr. Otto Gresham, Mr. Robert R. Welsh, Mr. John S. Cooper, counsel for appellants.

Mr. Charles A. Dupee, Mr. Noble B. Judah, Mr. Monroe L. Willard, Mr. Henry M. Wolf, counsel for appellees.

Appeal from the circuit court of the United States for the northern district of Illinois, northern division.

674 *Index.*

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675 In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE NORTHERN TRUST COMPANY and	} 832-23614. In Chancery.
Ovid B. Jameson, as Trustees,	
<i>vs.</i>	
COLUMBIA STRAW PAPER COMPANY.	

THE UNITED STATES OF AMERICA, *aa* :

[SEAL.] The President of the United States to the judges of the circuit court of the United States for the northern district of Illinois, Greeting :

Whereas, in a certain suit in said circuit court between Harry W. Dickerman, trustee, *et al.*, complainants *x*. The Northern Trust Company and Ovid B. Jameson, trustees, defendants, which suit was removed to the United States circuit court of appeals for the seventh circuit, by virtue of an appeal agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit :

A copy of the order appointing George P. Jones receiver of the Columbia Straw Paper Company, copy of the order substituting Hoyne, Follansbee and O'Conner as solicitors for said receiver, and a transcript of the certified copy of the proceedings in the chancery court of New Jersey, in the matter of the petition of Solomon Marx for the appointment of a receiver of the Columbia Straw Paper Company.

You, therefore, are hereby commanded that searching the records and proceedings in said cause, you certify what omissions to the extent above enumerated, you shall find, to the said United States circuit court of appeals for the seventh circuit, so that you have the same, together with this writ, before the said United States circuit court of appeals for the seventh circuit forthwith.

676 Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of September, 1896.

OLIVER T. MORTON,
*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

UNITED STATES OF AMERICA. }
Northern District of Illinois, Northern Division, } ss:

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THURSDAY, January 24, 1895.

THE NORTHERN TRUST COMPANY and	} 832-23614. In Chancery.
Ovid B. Jameson, as Trustees,	
vs.	
COLUMBIA STRAW PAPER COMPANY.	

Present: Hon. Peter S. Grosscup, district judge.

Upon reading and filing the verified bill of complaint in the above-entitled cause, and on motion for counsel for said complainants, counsel for said defendant appearing and consenting hereto, it is ordered by the court that George P. Jones, of Chicago, in the State of Illinois, be and he hereby is appointed receiver of this court of all and singular the estate, property, assets, rights and franchises, and rents, issues, incomes and profits thereof of the Columbia Straw Paper Company described or mentioned in the bill of complaint herein, and included and covered in and by the mortgage trust deed referred to in said bill of complaint, which said mortgage trust deed is dated the thirty-first day of December, A. D. 1892, and was executed by said defendant to said complainants, and has been duly recorded in all the counties hereinafter mentioned, and covers all the real and personal property of every kind, and all water, water power, leasehold and other rights, privileges, immunities, franchises and easements of every kind, and all rights, privileges and appurtenances to all the said property, franchises and easements appurtenant, belonging to said defendant and lo-

677 cated in the counties of Whiteside, La Salle, Winnebago, Will, Kendall and Kane in the northern division of the northern district of Illinois; and in the counties of Peoria, Livingston and Rock Island in the southern division of the northern district of Illinois; and in the counties of Sangamon and Fayette in the southern district of Illinois, and in the counties of Henry, Tippecanoe and Cass in the district of Indiana; and in the county of Blackhawk in the eastern division of the northern district of Iowa; and in the county of Clinton, in the Cedar Rapids division of the northern district of Iowa; and in the county of Lee, in the eastern division of the southern district of Iowa; and in the counties of Jackson and Monroe in the southern division of the eastern district of Michigan; and in the county of Pike, in the northern division of the eastern district of Missouri and in the county of Lancaster, in the district of Nebraska; and in the counties of Greene, Clark and Montgomery, in the western division of the southern district of Ohio; and in the counties — Defiance and Erie in the western division of the northern district of Ohio; and in the counties of Licking and Coshocton, in the eastern division of the southern district of Ohio; and in the counties of Stark and Tuscarawas in the eastern division of the northern district of Ohio, and in the county of Walworth, in the eastern district of Wisconsin; and in the county of Douglas in the first division of the district of Kansas.

Said receiver to have and to hold the same as the officer of and under the order and directions of this court.

Said receiver is hereby authorized and directed to take immediate possession of all and singular the property above described wherever situate or found.

The said defendant, The Columbia Straw Paper Company, and each and every of its officers, agents, directors and employes are hereby required and commanded forthwith to turn over, transfer and deliver to said receiver, or his duly constituted representative, any and — property included in said bill of complaint and covered by said mortgage trust deed, and they and each of them and all other persons are hereby enjoined from interfering in any way whatever with the possession or management of any part of the business or property over which said receiver is so appointed as aforesaid, and from in any way preventing or seeking to prevent, the discharge of his duties as such receiver, and all creditors of said straw paper company are hereby enjoined from in any way interfering with the property and rights aforesaid.

678 And said receiver is authorized to take all such steps and do and perform such acts and things as he shall deem necessary or advisable for the preservation and protection of the property and rights over which he is hereby appointed, including the insurance thereof, and payment of taxes thereon, and hereby is vested with full power at his discretion to employ and discharge and fix the compensation of all such counsel, attorneys, managers, agents and employes as may be required for the proper discharge of the duties of his trust, and to make such disbursements as are or may be proper in the premises.

Said receiver is hereby fully authorized and empowered to institute and prosecute all such suits as may be necessary or advisable in his judgment, to the proper protection of the property and trust hereby vested in him, and likewise to defend all actions instituted against him as such receiver, and also to appear in and conduct the prosecution or defense of any and all suits or proceedings now pending or that may hereafter be brought in any court against said straw paper company, the prosecution or defense of which will, in the judgment of said receiver, be necessary and proper or advisable for the protection of the property and rights hereby placed under his charge, and for the interest of the bondholders secured by said mortgage trust deed.

Said receiver is hereby required to give bond in the sum of \$50,000, with security satisfactory to the clerk of this court for the faithful discharge of his duties as such receiver.

The court reserves the right, by orders hereinafter to be made, to regulate and control in all respects the conduct of said receiver.

The complainants are hereby authorized to apply to any other United States circuit court, or courts, of competent jurisdiction, that may take ancillary jurisdiction in the premises for such order or orders in aid of the primary jurisdiction vested in this court as they may deem necessary or advisable. The receiver is hereby authorized to sell at private sale any raw material for the manufacture of paper which shall come to his possession as such receiver, and in like manner to sell all paper manufactured.

679 United States Circuit Court, Northern District of Illinois,
Northern Division.

MONDAY, September 23, 1895.

Present: Hon. John W. Showalter, circuit judge.

NORTHERN TRUST COMPANY ET AL.	} In Chancery. 23614.
vs.	
COLUMBIA STRAW PAPER COMPANY.	

Leave is hereby granted to Dupee, Judah, Willard and Wolf to withdraw their appearance for George P. Jones, receiver, and leave to Hoyne, Follansbee and O'Connor to enter their appearance for said receiver.

In Chancery of New Jersey.

In the Matter of the Petition of SOLOMON MARX for the Appointment of a Receiver of the Columbia Straw Paper Company.

The Petition of Solomon Marx, of the City, County, and State of New York.

To the Honorable Alexander T. McGill, chancellor of the State of New Jersey :

First. That he is a stockholder of the Columbia Straw Paper Company, owning forty shares of the preferred stock and eighty

shares of the common stock of said company, each of said shares being of the par value of one hundred dollars.

Second. That theretofore, and on or about the 3rd day of December, 1892, the said Columbia Straw Paper Company was duly organized and incorporated under and by virtue of the provisions of an act of the legislature of the State of New Jersey entitled "An act concerning corporations," approved April 7, 1875, and the several acts supplementary thereto and amendatory thereof.

That the certificate of incorporation of the said company was duly recorded in the office of the clerk of Hudson county in the
680 State of New Jersey on the 3rd day of December, 1892, and was duly filed in the office of the secretary of state of New Jersey on the 6th day of December, 1892.

Third. That the objects for which the said company was formed *was* principally the manufacture, purchase, sale and exchange of paper of various kinds; and the said corporation on or about the 6th day of December, 1892, entered upon the business for which it was incorporated, its principal transactions being conducted in the States of Illinois, Indiana, Ohio, Iowa, Michigan, Missouri, Kansas and Nebraska.

Fourth. That the total amount of the capital stock of said company was fixed at the sum of \$4,000,000, divided into \$1,000,000 of preferred stock and \$3,000,000 of common stock. That all of the said stock has been duly issued by the said corporation and is now outstanding.

Fifth. That the said corporation has become insolvent and is unable to pay its liabilities as they accrue. That on the 22nd day of January, 1895, an execution was duly sued out against the chattels and property of said Columbia Straw Paper Company, upon a judgment obtained against said defendant by one James Flanagan before George W. Underwood, justice of the peace, in Cook county, Illinois, — has failed to remove, discharge or pay such execution, although duly requested so to do.

Sixth. That on or about the 31st day of December, 1892, said company, for valuable consideration, duly issued 1,000 bonds of \$1,000, each being of the aggregate amount of \$1,000,000, by the terms of which it agreed to pay interest at the rate of six per cent. per annum from the 1st day of December, 1892, on the 1st days of June and December in each year.

That the said Columbia Straw Paper Company further agreed that it would on the 1st day of December, 1893, redeem 100 of its bonds, by paying therefor the sum of \$110,000, with accrued interest, and that it would likewise on the 1st day of December, 1894, redeem 105 of said bonds, by paying therefor the sum of \$1,100 for each of the bonds.

That said Columbia Straw Paper Company has made default in the payment of the interest growing due upon its said bonds on the first days of June and December, 1893, and in redeeming the
681 bonds, which it agreed as aforesaid to redeem on the 1st day of December, 1893, and on the 1st day of December, 1894, respectively.

That the said Columbia Straw Paper Company has further permitted various of its notes to become protested, and has failed to pay other of its obligations as they matured, and actions have been brought against it in several of the States in which it carries on its transactions, by various of its creditors for the recovery of the moneys owing by said company.

Seventh. That the said Columbia Straw Paper Company, on the 31st day of December, 1892, executed and delivered to the Northern Trust Company and Ovid B. Jameson as trustees, a deed of trust to secure the payment of the aforesaid bonds, which instrument was made a lien upon all of the freehold and leasehold properties of the said company, and on all of its plant, tools, materials, equipment, machinery, chattels and rights of every name, nature and description whatsoever, whether fixed or movable, together with the corporate rights, privileges, immunities or franchises then owned or held by said company in and to its business, or which might be thereafter acquired by it.

That the said trustees have, under the power conferred upon them by the said deed of trust taken possession of the said real and personal property and are now in possession thereof. That they have filed a bill for the foreclosure of the said mortgage or deed of trust in the circuit court of the United States for the northern district of Illinois, where said action is now pending.

Eighth. That the said Columbia Straw Paper Company has since the filing of the aforesaid bill, to wit, on or about the 24th day of January, 1895, suspended its ordinary business for want of funds to carry on the same. That it has ceased to manufacture the goods which prior to said day it has been engaged in manufacturing, and for the production of which said company had been organized. That it has attempted to lease a number of its properties to various individuals and has discontinued its operations.

Ninth. That said Columbia Straw Paper Company is in possession of money and other effects which are not covered by said mortgage, but which are insufficient in value to pay the debts of the said

682 Columbia Straw Paper Company. That the directors of said company have practically abandoned the management of its affairs, and, unless a receiver of said corporation is appointed, the interests of the stockholders and creditors of said Columbia Straw Paper Company will be greatly jeopardized, and the said property will be subject to great depreciation and waste.

Wherefore your petitioner prays for a writ of injunction restraining the said Columbia Straw Paper Company and all of its officers and directors from further continuing in business, and from carrying on its operations and exercising any of the privileges or franchises conferred upon said corporation by its certificate of incorporation, and from collecting or receiving any debts, or from paying out, selling, assigning, or transferring any estate, moneys, funds, lands, tenements or effects of the said company until the court shall otherwise order; and for the appointment of a receiver of all the property and assets of the said Columbia Straw Paper Company, with full power and authority to demand, sue for, collect, receive

and take into its possession all of the goods, chattels, rights, franchises, moneys, funds, lands, tenements, books, papers, choses in action, bills, notes and property of every description belonging to the said Columbia Straw Paper Company at the time of its insolvency and suspension of business as aforesaid, with the usual powers of such receiver, according to the course and practice of this honorable court, and your petitioner will ever pray.

SALOMON MARX, *Petitioner.*

WALLIS, EDWARDS & BUMSTEAD,

Solicitors and of Counsel with Petitioner.

STATE OF NEW YORK, }
City and County of New York, } ss :

Salomon Marx, being duly sworn, deposes and says that he is the petitioner above named, that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

SALOMON MARX.

Subscribed and sworn to before me this 8th day of March, 1895.

JOSEPH A. ARNOLD,

Notary Public, New York County, No. 104.

Certificate in Kings Co.

683 STATE OF NEW YORK, }
City and County of New York, } ss :

I, Henry D. Purroy, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that Joseph A. Arnold, before whom the annexed deposition was taken, was, at the time of taking the same, a notary public of New York, dwelling in the said city and county, duly appointed and sworn, and authorized to administer oaths to be used in any court in said State, and for general purposes; that I am well acquainted with the handwriting of said notary, and that his signature is genuine, as I verily believe.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court and county the 8th day of March, 1895.

HENRY D. PURROY, *Clerk.*

In the Court of Chancery, State of New Jersey.

In the Matter of the Petition of SALOMON MARX for the Appointment of a Receiver of the Columbia Straw Paper Company.

STATE OF NEW YORK, }
City and County of New York, } ss :

Louis Marshall, being duly sworn, deposes and says:

I am an attorney and counsellor of the supreme court of the State

of New York. I am acquainted with the various directors of the Columbia Straw Paper Company, which is a corporation organized under the laws of the State of New Jersey. Said company has its principal office outside of the State of New Jersey, in the city of Chicago, Illinois.

I am well acquainted with the president of the said company, Mr. Philo D. Beard, who resides in Chicago, and also with Emanuel

Stine, the secretary of said company. I have had various
684 conversations with them with respect to its affairs since the 1st day of January, 1895, and prior to that time. From information which I have derived from the directors of said company at various times, I have become familiar with the property of said company, and with its indebtedness.

I know that the said company has issued bonds secured by a trust deed upon all of its property to the amount of \$1,000,000, and that said bonds draw interest at the rate of six per cent. per annum; that by the terms of said bonds the said company agreed that it would, on December 1, 1893, redeem one hundred of its bonds by paying therefor the sum of \$110,000, and that it would likewise redeem, on the 1st day of December, 1894, 105 bonds, by paying therefor the sum of \$1,100 for each of said bonds. I know that said company has failed to redeem said bonds, and that it has also made default in the payment of interest growing due upon its bonds on the 1st day of June and December, 1893. The president of said company has informed me of such default. I also know that an action has been commenced by the Northern Trust Company and Ovid B. Jameson, as trustees, for the foreclosure of the said deed of trust, in the circuit court of the United States for the northern district of Illinois. I drew the bill of complaint in said action. Said action is now pending and undetermined.

I also know, from information given to me by the said Philo D. Beard, the president of the said Columbia Straw Paper Company, that the said trustees have entered into the possession of all of the property described in said deed of trust, to wit, all the freehold and leasehold properties of said company, and all of its plant, tools, materials, equipment, machinery, chattels and rights of every name, nature and description *whatsoever* whatsoever. Upon the filing of the bill of complaint in said action of foreclosure, to wit, on the 24th day of January, 1895, the said Columbia Straw Paper Company suspended its ordinary business for want of funds to carry on the same; I was informed of said fact by its said president, who told me that for several days prior to said date said company had ceased to manufacture any goods whatsoever, and that it had attempted to lease a number of its properties to various individuals, and had discontinued its operations. He also informed me that the liabilities of said company were largely in excess of its assets, and that it had but little money in its possession, and that that had been or was about to be expended in the ordinary course of business; that the directors of the company had practically abandoned the management of its affairs.

685 I have also been informed by Henry M. Wolf, of the city of Chicago, in the State of Illinois, who is an attorney and counsellor of that State, that judgment was obtained against said Columbia Straw Paper Company, before George W. Underwood, Esq., a justice of the peace of Cook county, Illinois, in an action brought against said company by one James Flanagan, that an execution had been duly issued against the property and chattels of said Columbia Straw Paper Company in said action, and that said company had failed to remove, pay or discharge said judgment and was unable to do so.

I am satisfied that the said company will be unable to resume business with safety to its creditors and stockholders. Its assets are insufficient, in my judgment, to pay the amount of its mortgage bonds. I was in Chicago during the month of November, 1884, and there saw all of the directors of the said Columbia Straw Paper Company, and none of them pretended that the assets of said company would realize a sum sufficient to pay the first-mortgage bonds. They also informed me that the said company was indebted, in addition to the said bonded debt, to an amount exceeding \$100,000; and that the said company had no credit.

I have since been informed by Mr. Beard that the said company will be unable to pay its obligations and that unless the bondholders and stockholders should contribute the moneys necessary to pay the unsecured obligations of the said Columbia Straw Paper Company, it would be absolutely impossible for said company to resume its operations, and they further informed me that it was unlikely that the bondholders and stockholders would furnish the funds necessary to pay the unsecured debts of said company and to furnish it with the necessary capital for continuing its operations.

LOUIS MARSHALL.

Subscribed and sworn to before me, a notary public, in and for the city, county and State of New York, this 26th day of March, 1895.

[L. s.]

J. C. C. HARDING,
Notary Public, New York County.

In chancery of New Jersey, in the matter of the petition of Solomon Marx for the appointment of a receiver of the Columbia Straw Paper Company.

Petition.

WILLIS, EDWARDS & BUMSTED, *Solicitors.*

Filed April 3, 1895.

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In Chancery of New Jersey.

In the Matter of the Petition of SOLOMON MARX for the Appointment of a Receiver of the Columbia Straw Paper Company.

On reading and filing the petition herein, it is on this third day of April, eighteen hundred and ninety-five, on motion of Wallis,

Edwards & Bumsted, of counsel with the complainant, ordered that the defendant, The Columbia Straw Paper Company, show cause before the chancellor on Monday, the twenty-second day of April, instant, at the chancery chambers in Jersey City, at 10 o'clock in the forenoon, why a receiver or receivers of said company should not be appointed pursuant to the prayer of the said bill.

And it is further ordered that until the further order herein the said Columbia Straw Paper Company, its officers and agents, be and they are hereby restrained from exercising any of the privileges or franchises granted by its certificate or by the act incorporating said company, and from collecting and receiving any debts, or from paying out, selling, assigning or transferring any of the estate, moneys, funds, lands, tenements or effects of the said company provided that nothing herein contained shall prevent the ordinary and usual continuance of the business of the said company sufficient only to maintain the same in operation, if it be in operation.

And it is further ordered that a copy of this order together with a copy of the petition and affidavits, which copies need not be certified, be served within five days upon the president, secretary or director of said company by personal service, either within or without the State; if service upon the president shall not be effected then a copy of this order shall be mailed to him at his post-office address within said five days in addition to the service upon a director or secretary aforesaid required.

ALEX. T. MCGILL.

In chancery of New Jersey in the matter of the petition of Solomon Marx for the appointment of a receiver of the Columbia Straw Paper Company. Order to show cause. Wallis, Edwards & Bumsted, solicitors.

Filed April 3, 1895. V. H. O.

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In Chancery of New Jersey.

In the Matter of the Petition of SALOMON MARKS for the Appointment of a Receiver of the Columbia Straw Paper Company.

CITY AND COUNTY OF NEW YORK, ss :

Louis Marshall, being duly sworn, deposes and says:

I reside at the Hotel Waldorf, in the city of New York. I am acquainted with the various gentlemen who have acted as directors of the Columbia Straw Paper Company during the last year. Among them Philo D. Beard; Emanuel Stein; Messrs. Halliday, Church, Trebein, Brown, Higgins and Mr. Beard has been the president, Mr. Stein the secretary, and Dr. Higgins, the treasurer, of the company. During the latter part of November, 1894, I visited the city of Chicago, at the office of the company, No. 1500 Old Colony building in said city of Chicago, and on several days had extended conferences, at which the several directors whom I have named were present. The financial condition of the company was discussed

and figures were presented by the secretary, Mr. Stein, showing the amount of the indebtedness of the company. This indebtedness, outside of the bonded debt and the interest coupons which had matured and were about to mature, exceeded \$200,000. The ability of the company to pay this indebtedness was discussed by the various directors, and it was stated by all of them that without outside help, the company would be unable to pay its debts as they matured, and that it would be unable to pay the interest on its coupons which would become due on the 1st day of December, 1894. I inquired as to what assets the company had which were available for the payment of its debts, and was informed by the directors whom I have named that the assets available for the payment of the debts, outside of the fixed plant of the company could not exceed \$50,000. That the company had no outstanding accounts except such an amount was owing to it by the Paper Commission Company, which amounted to about \$20,000, and which had been pledged by the Columbia Straw Paper Company for the payment of the debts which were about to mature.

The directors stated that they were unwilling to make any further advances to the company or to further indorse for it. Shortly
688 after the first day of January, 1895, I met Mr. Philo D. Beard at my office in the city of New York and he informed me that the company had defaulted in the payment of the interest on its bonds and that it would be unable to pay its debts; that the Northern Trust Company and Ovid B. Jameson, as trustees for the benefit of bondholders of the Columbia Straw Paper Company, had taken possession of all the property of the corporation, including all supplies and manufactured goods which it had on hand, and that the money owing to the company from the Paper Commission Company had been used in paying the debts of the company for which said account had been pledged. He also informed me that the company had ceased to manufacture any goods whatsoever, and had suspended its ordinary business for want of funds to carry on the same; that it had attempted to lease a number of its properties to various individuals and had entirely discontinued its operations; that the directors of the company had abandoned the managements of its affairs, and that the liabilities of the company largely exceeded its assets; that the company had been sued in various States and attempts had been made to attach its property.

I saw Mr. Beard again about the middle of January, 1895, in company with Mr. Allen, of Chicago, his counsel, and he then informed me that the company would be unable to pay its obligations, and that unless the bondholders and stockholders would contribute the money necessary to pay the unsecured debts of the Columbia Straw Paper Company it would be absolutely impossible for the company to resume its operations; he also informed me that it was unlikely that the bondholders and stockholders would obtain the funds necessary to pay the unsecured debts of the company, and the necessary funds to enable it to continue its operations. I know that the company has issued bonds secured by a trust deed on all of its property to the amount of \$1,000,000, the bonds

drawing interest at the rate of six per cent. per annum. The mortgage contains a clause providing that on December 1, 1893, it would redeem 100 of its bonds by paying therefor \$110,000, and that it would likewise redeem 105 of its bonds on December 1, 1894, by paying therefor at the rate of \$1,100 for each bond. I know that the company has failed to redeem these bonds. Mr. Beard has so informed me, and he has also informed me that it has made default in the payment of the interest growing due upon its bonds on the 1st days of June and December, 1894. I also know that an action has been commenced by the Northern Trust Company and Ovid B. Jameson, as trustees, for the foreclosure of said deed of trust, in the northern district of Illinois.

I drew the complaint in that action and annex a copy thereof 689 to this deposition. The action is now pending and undetermined. A receiver has been appointed in the action, who has taken possession of all the corporate property. I am informed by Henry M. Wolf, of the city of Chicago, who is one of the attorneys of record for the complainant in the foreclosure action, that a judgment has been obtained against the company before George W. Underwood, Esq., a justice of the peace, in Cook county, Illinois, and an execution has been duly issued against the property and chattels of the company, which judgment the company has failed to pay or discharge. I have also been informed by Mr. Wolf that the directors of the Columbia Straw Paper Company have all resigned and that no successors have been chosen in their places. While I was at Chicago in November, 1894, I discussed with the directors the question as to the value of the property of the corporation, including that covered by its mortgage, and as to the amount that its assets would realize on the sale thereof. I was informed by the several directors whom I have above named, all of whom concurred in the statement, that all of the assets of the company would be insufficient to pay the amount of the mortgage bonds amounting to \$1,000,000. They also informed me that the company could not borrow any more money at any bank, and its credit was bad, and that several of the banks which had previously extended credit to the company were insisting upon the payment of the loans made by them to the company, and that they had refused to renew loans as they matured.

The bill of complaint in the foreclosure action was filed about January 24, 1895, and thereupon the company suspended its ordinary business.

The company has answered in this action, a copy of which answer I hereto annex.

LOUIS MARSHALL.

Sworn and subscribed to before me the second day of May, 1895, in the city of New York, State of New York.

CHARLES C. KELLEY,
Master in Chancery of New Jersey.

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UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division. }

In the Circuit Court of the United States.

NORTHERN TRUST COMPANY and OVID B. JAMESON, Trustees, }
 Complainants, }
vs. }
 COLUMBIA STRAW PAPER CO., Defendant. }

The Answer of said Defendant, The Columbia Straw Paper Company, to the Bill of Complaint.

The Columbia Straw Paper Company, defendant in the above-entitled cause, saving to itself all benefit of exception to the many errors, uncertainties and insufficiencies in said bill of complaint contained, for answer to so much thereof as it is advised is necessary, says:

Defendant admits that it executed and issued one thousand (1,000) bonds of one thousand dollars (\$1,000) each, as alleged in said bill of complaint, of the tenor and effect and containing the provisions substantially as set forth in said bill and that said bonds were certified by the said Northern Trust Company, complainant, as trustee, and that the same have been negotiated, sold and are now valid outstanding obligations of said defendant company, as in said bill set forth.

Defendant further answering admits the execution of the mortgage or deed of trust, and delivery of the same to said complainants, wherein and whereby it conveyed to said complainants as trustees, the property in said bill set forth, and all property which could be legally subjected to the lien of the mortgage then owned or thereafter acquired, all of which will more fully appear by reference to said mortgage or deed of trust, a copy of which was filed with said bill of complaint.

Defendant admits that part of the property covered by said mortgage or deed of trust, was situated in the northern district of the State of Illinois, as particularly described in said bill of complaint.

691 Defendant further answering admits that by the terms of said mortgage or deed of trust, the same should become enforceable upon the happening of certain events substantially as set forth in said bill of complaint, and which will more fully and particularly appear by reference to the said mortgage itself, and that the said defendant company has made default in redeeming or discharging the various series of bonds referred to in paragraphs VI and VII in said bill of complaint, and have likewise made default in the payment of interest on said bonds set forth in paragraph VII, and also admits the entry of a judgment and issuance of execution as in paragraph VIII of said bill alleged.

Defendant neither admits nor denies that said trustees have been requested in writing by the owners and holders of more than one-

third of said bonds to enforce the provisions of said trust and to bring this suit, and leaves complainants to make proof thereof. The defendant admits that it is unable at present to pay its just debts and liabilities, but claims that the property covered by said mortgage or deed of trust is worth very largely more than the amount of said bonds and the indebtedness of said company.

Defendant further answering admits that the said trustees prior to the filing of said bill of complaint took possession of the real and personal property of said defendant company by said mortgage as in said bill alleged, and that said mortgage contained the provision with reference to such taking possession substantially as in said bill alleged.

And now having answered said bill, the defendant prays to be hence dismissed with its costs.

United States circuit court, northern district of Illinois. Northern Tr. Co. v. Columbia Straw Paper Co. Answer of Columbia Straw Paper Co. Copy.

In chancery of New Jersey. In the matter of the petition of Solomon Marx for the appointment of a receiver of the Columbia Straw Paper Company. Supplemental proof. Wallis, Edwards & Bumstead, sol'rs. Filed May 7, 1895.

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On Bill, &c. Order Appointing Receiver.

In Chancery of New Jersey.

In the Matter of the Petition of SOLOMON MARKS for the Appointment of a Receiver for the Columbia Straw Paper Company.

Upon opening this matter to the court by Wallis, Edwards & Bumsted, of counsel with the complainant, and due proof being made of the service of the order to show cause why a receiver should not be appointed heretofore made herein and of the mailing of the notices as therein directed, which said hearing has been, by orders duly entered, continued until the date hereof, and it appearing that the said defendant has suspended its ordinary business and is insolvent, and is not about to resume its business within a short time with safety to the public and advantage to the stockholders.

It is on this sixth day of May, eighteen hundred and ninety-five, ordered that William G. E. See, be and he hereby is appointed receiver of the said Columbia Straw Paper Company, with full power and authority to demand, sue for, collect and receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes and property of any and every description belonging to the said The Columbia Straw Paper Company at the time of its insolvency or suspension of business, and to do and perform all the duties imposed upon them and required by law, and especially by an act entitled "An act concerning corporations," approved April 7, 1875.

And it is further ordered that said William G. E. See, before entering upon his duties as such receiver, take the oath prescribed by law, and within ten days from the date hereof give a bond to the chancellor in the sum of two thousand dollars, conditioned for the faithful performance of his duties as such receiver, and of the orders of the court hereafter made in this cause, which bond shall be approved as to form and security thereof by one of the special masters of this court; said receiver may, however, be required to give bond in a further sum when directed by further order of this court.

And it is further ordered that an injunction be issued 693 according to the prayer of the said petition directed to the said Columbia Straw Paper Company, its officers and agents, restraining them and each of them from exercising any of the privileges or franchises granted by its certificate or by the act incorporating the said company, and from collecting or receiving any debts, or from paying out, selling, assigning or transferring any of the estate, moneys, lands, finds, tenements or effects of the said company until the court shall otherwise order.

And it is further ordered that the said company do convey and assign its assets, real and personal, to the said William G. E. See, receiver as aforesaid, by due instruments for that purpose.

ALEX. T. MCGILL.

In chancery of New Jersey. In the matter of the petition of Solomon Marks for the appointment of a receiver for the Columbia Straw Paper Company. Order appointing receiver. Wallace, Edwards & Bumsted, sol'rs.

Filed May 7, 1895.

V. H. O.

I, Allan McDermott, clerk of the court of chancery of the State of New Jersey, the same being a court of record, do hereby certify that the foregoing are true copies of petition filed April 3, 1895, order to show cause filed April 3, 1895; supplemental proof and [L. s.] answer filed May 7, 1895, and order appointing receiver filed May 7, 1895, in the *the* matter of the petition of Solomon *Marc* for the appointment of a receiver of the Columbia Straw Paper Company, now on the files of my office.

In testimony whereof, I have hereto set my hand and affixed the seal of said court at Trenton, this eleventh day of May, A. D. eighteen hundred and ninety-five.

ALLAN McDERMOTT, *Clerk*.

I, Alexander T. McGill, chancellor of the State of New Jersey, do hereby certify that Allan McDermott, whose name is subscribed to the above certificate, was, at the date thereof, and now is, the clerk of the court of chancery of the State of New Jersey; that said attestation is in due form; that the seal thereto annexed is the seal of said court, and that the signature of the said Allan McDermott is in his own proper handwriting.

694 Witness my hand at the city of Trenton, this eleventh day of May, A. D. eighteen hundred and ninety-five.

ALEX. T. MCGILL, C.

In chancery of New Jersey. In the matter of the petition of Solomon Marx for the appointment of a receiver of the Columbia Straw Paper Company. Wallis, Edwards & Bumsted, solicitors.

Defendants' Ex. A—H. W. B., 12, 3 of '95.

Clerk's Certificate.

UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division. }

I, S. W. Burnham, clerk of the circuit court of the United States for said northern district by virtue of this writ to me directed and delivered, do hereby certify to the said United States circuit court of appeals for the seventh circuit a transcript of a copy of the order appointing George P. Jones, receiver of the Columbia Straw Paper Company, and a transcript of the certified copy of the proceedings in the chancery court of New Jersey in the matter of the petition of Solomon Marx, for the appointment of a receiver of the Columbia Straw Paper Company, filed as Exhibit A, to the testimony taken before Henry W. Bishop, Esq., one of the masters in chancery of said court, filed April 15, 1896, and a copy of the order of September 23, 1895, substituting Hoynes, Follansbee and O'Connor, as solicitors for said receiver.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this 29th day of September, A. D. 1896.

[SEAL.]

S. W. BURNHAM, *Clerk.*

At a regular term of the United States circuit court of appeals for the seventh circuit, begun and held at the United States court-rooms, in the city of Chicago, in said seventh circuit, on the 5th day of October, 1896, of the October term, in the year of our
695 Lord one thousand eight hundred and ninety-six and of our Independence the one hundred and twenty-first year.

And afterwards, to wit: on the 5th day of October, 1896, in the October term of said year, in the record of proceedings thereof in said entitled cause before the Hon. William A. Woods, circuit judge, and the Hon. James G. Jenkins, circuit judge, appears the following entry, to wit:

Before Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge.

It is ordered by the court that Romanzo Bunn, judge of the district court of the United States for the western district of Wisconsin is designated and assigned to sit in this court as a member thereof during the present session.

Thereupon said Bunn appeared and took his seat as a member of said court.

HARRY W. DICKERMAN, Trustee, ET AL. }
 vs.
 NORTHERN TRUST COMPANY, Trustee, ET AL. }

It is ordered by the court that this cause be, and the same is hereby, set down for hearing November 4, 1896.

And afterwards, to wit: on the fourth day of November, 1896, in the October term of the said year, the following further proceedings were had and entered of record, to wit:

NOVEMBER 4, 1896.

Before Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge; Hon. Romanzo Bunn, district judge.

696 HARRY W. DICKERMAN, Trustee, ET AL. }
 vs. } 344.
 NORTHERN TRUST CO., Trustee, ET AL. }

Now this day come the parties by their counsel and this cause comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. Otto Gresham and Mr. John S. Cooper, counsel for appellants, and by Mr. Charles A. Dupee, counsel for appellees; and the court having heard the same, takes this matter under advisement.

And afterwards, to wit: on the 24th day of May, 1897, in the term and year last aforesaid, there was filed in the clerk's office of said court its opinion of the court in said cause; which opinion was in the words and figures following, to wit:

697 In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1896.

HARRY W. DICKERMAN ET AL., Appel- } No. 344. On Appeal from
 lants, } the Circuit Court of the
 vs. } United States for the
 THE NORTHERN TRUST COMPANY and } Northern District of
 Ovid B. Jameson, Trustee. } Illinois.

Before Woods and Jenkins, circuit judges, and Bunn, district judge.

This is a suit brought by the Northern Trust Company, a corporation organized under the laws of Illinois, and doing business at Chicago, and Ovid B. Jameson, a citizen of the State of Indiana, as trustees, against the Columbia Straw Paper Company, a corporation organized under the laws of New Jersey, to foreclose a trust deed covering various paper mill properties given by the Columbia Straw Paper Company to the appellees, to secure the payment of one thousand first-mortgage gold-bearing bonds of the company for

the sum of one thousand dollars each, payable to the bearer or registered owner thereof in gold coin, and bearing interest at six per cent. per annum from the first day of December, 1892, payable half yearly; the interest on the bonds being secured by coupons in the usual manner attached to the bonds.

At the commencement of the suit the Columbia Straw Paper Company was the only defendant. During the progress of the cause Harry W. Dickerman and other persons, minority holders of stock in the Columbia Straw Paper Company, upon petition to the court, were allowed to come in and answer and to file a cross-bill. Answers were filed setting up collusion and fraud on the part of the Columbia Straw Paper Company and the controlling stockholders, and especially in overvaluing the various mill plants and properties upon which options were taken and which were transferred to that company in exchange for its capital stock; such Columbia Straw Paper Mill Company having been organized for the purpose of taking such conveyances, and thus consolidating the plants upon which options had been taken for that purpose. There were, it

698 seems, some seventy of these paper mill properties situated in Illinois and other States. With the purpose of reducing expenses and more economically carrying on the business, the idea was conceived by some of the owners of consolidating the various plants under one organization. To that end options were taken running for six months, and a new company, to be called the Columbia Straw Paper Company, was organized with a capital stock of \$4,000,000, with preferred stock of \$1,000,000, to receive conveyances of the various plants from the person or persons taking the options, in exchange for the stock of the new company. The business, as it had been carried on by the separate mills, each with a full set of officers and managers, had not been profitable, and the purpose of the scheme was to reduce expenses by a consolidation of the various interests, and by the organization of a single management. More capital was also needed to carry on the business, and this was to be provided by the issuance by the new company of \$1,000,000 of gold-bearing bonds to be secured by a first mortgage upon the consolidated properties of the new company. The plan is fully set forth in the option contracts given by the mill-owners. \$100,000 of the bonded indebtedness was to be retired annually. The mill-owners were to be paid according to their options, partly in cash and partly in the common and preferred stock of the company. The money to pay for the mills and provide the working capital to organize the new company and carry into effect all the details of the plan, including negotiations with mill-owners and paying preliminary expenses, was to be furnished by the party taking the options. This party was to procure and convey to the company a good title to the property named in the options and give the new company a working capital of \$200,000, and the company in return was to transfer to the party so taking the options all the stock and bonds of the company. This arrangement was perfected and carried out by written contract between the company and Emanuel Stein, contained in the record. Some or all of the options in the

first instance were given to Philo D. Beard and Thomas D. Ramsdell, both of Buffalo, who transferred them to Stein. Stein, according to the contract, transferred all of the options to the company in exchange for its stock, but the stock called for by the options and which was to go to the various companies who had given the options, was delivered by the company to the mill-owners upon the order of Stein. All the other stock was delivered by the company to Stein, who converted the bonds and from the proceeds made the cash payments for the mills and \$200,000 to the company. Some of the stock was used in paying for the mills as agreed; some was used in payment for assistance to promoters of the enterprise in obtaining options and some to pay commissions on sale to third parties of bonds, to lawyers for services, and to pay traveling and incidental expenses. In disposing of the bonds it was found necessary to give the purchaser of each \$1,000 a bonus of \$200, in addition of the preferred stock, and \$400 in the common stock of the company. All the bonds were sold in this way to any one who would buy them. The sum of \$200,000 of the proceeds was handed over by Stein to the company, and the balance used in paying for the plants. Of the \$1,000,000 preferred stock, \$629,000 went to the mill-owners, and \$200,000 to the purchasers of bonds. Of the common stock, \$1,258,000 went to the mill-owners, and \$400,000 to the purchasers of bonds. Some of the remainder went to Stein for services, and some was retransferred to the company under a modification agreement between him and the company.

In this way the company acquired title to thirty-nine mill plants out of seventy then in existence in the district covering the new enterprise. As before stated, the appellants are minority stockholders in the Columbia Straw Paper Company, having in the aggregate 785 of the 10,000 shares of the preferred stock of the company and 1,070 of the 30,000 shares of the common stock. The answer of appellants to the original bill for foreclosure admits that 1,000 bonds of the company were sold and paid for at par, \$1,000 for each bond, by the parties who purchased from Stein. This is also shown by the evidence. These are the bonds in suit and to secure which the company gave its deed of trust for the various mill properties conveyed to it, which it was the purpose of the suit to foreclose. After the new enterprise was launched the panic and hard times came on, business was interrupted and broken up, and the company unable to meet its obligations. Default was made in the payment of the principal and interest of the bonds. Indeed, no portion, either of principal or interest, has ever been paid. The proofs are quite voluminous, but perhaps the above statement will be sufficient for the purposes of this opinion. As stated, The Columbia Straw Paper Company was the only defendant in the original bill to foreclose. Its answer virtually admitted the facts set out in the bill, and confessed its inability to pay. Subsequently Dickerman and the other stockholders who are here as appellants, came in by petition and obtained leave to defend. The theory of their answer was that there was a fraudulent overvaluation of the property transferred to the company, that all the bondholders had acquired stock of the

company without payment therefore, or that they were assignees, of the bonds with notice of these facts, that they were still indebted to the company for the stock, and that the court should ascertain the amount of such indebtedness, and set off the same against the bonds. Substantially the same matters were set off by cross-
 700 bill. The case was referred to Henry W. Bishop, master in chancery, to take the proofs and report to the court, which he did. By this report the master found all the issues in favor of the complainant and against the defendants; that the bonds had been made and delivered as alleged; that they were valid obligations against the company; that default had been made by the non-payment of principal and interest; that the defendant company was insolvent and unable to pay its debts; that on or about January 22nd, 1895, an execution was duly sued out against the property of the company upon a judgment against the defendant by one James Flanagan, before George W. Underwood, justice of the peace, which still remained undischarged, and that by reason of the premises and as provided in the deed of trust the complainants had declared the principal and interest secured by the said one thousand bonds of the aggregate face value of one million dollars to be immediately due and payable, and that they had been requested in writing by the owners of more than one-third of the bonds to enforce the provisions of the deed of trust and the security created thereby.

The report further finds that the contention of the defendants who are now the appellants, that the procurement of the Flanagan judgment was the result of collusion with the company is not supported by the testimony. All the other issues were found in favor of the complainants. This report was filed on April 15, 1896, and two days after the opinion of the court was rendered and a decree signed overruling the exceptions to, and affirming the master's report, and ordering a foreclosure and sale in accordance with the prayer of the bill.

BUNN, district judge, delivered the opinion of the court:

Upon a careful perusal of the record and testimony we find no error in the conclusions of law or fact, and think that the decree of the circuit court should be affirmed. The defendants seem to have failed wholly in making good the allegation contained in the answer.

The principal questions discussed and on which the case turned in the court below seemed to be: whether there was any fraud or collusion practiced in the organization of the company and the issuing of the stock; whether stock was issued without consideration and which has not been paid for; whether there had been a fraudulent overvaluation of the property and different mill plants conveyed to the defendant company under the options taken by
 701 Stein, and if so whether those defendants who are the appellants here, being simply stockholders in, and not creditors of the company, were in a position to urge such matters in defense to defeat the foreclosure of the mortgage or deed of trust given by the company to the trustees to secure the one million dollars of bonds,

on sale of which the money was raised to put the new enterprise upon its feet. The main question is whether there is any liability on the part of the stockholders in defendant company which can be enforced in this proceeding or set up as a reason for defeating the foreclosure. We are of opinion that these contentions made by the defendants were properly overruled. The prime difficulty was in the lack of evidence to support the allegations of the answer. There was no evidence of any fraudulent overvaluation or of issuing stock without consideration. The consolidation of the plants and the organization of a new company was an experiment entered into for the supposed benefit of the various owners.

Assuming that the stock of the new company was of par value, and that the plants were worth only the prices fixed upon them in the several options, of course there would appear to be an overvaluation in the sale. But this is an assumption that would scarcely be warranted. Probably there was not much market value for the stock, especially the common and unpreferred stock. It was supposed that the new enterprise would make the plants more valuable, so that the value of any plant before the transfer would not be evidence of its value after the consolidation should be completed. Every one interested proceeded with his eyes open, and it was entirely competent to make such contract as they might agree upon. There was no compulsion practiced and no evidence of fraud. The mill-owners could set such valuation upon their plants as they chose, or as they could agree upon with those taking the options. The holders of options and the new company in the absence of fraud could do the same thing and make such bargain for the transfer as they saw fit. These owners wanted money. They wanted more capital. They wanted to lessen the expenses of conducting the business. The scheme by which this money was to be raised was to issue bonds upon a first-mortgage security, and induce capitalists to buy them. The money was parted with on the faith of these bonds, which were negotiable, though even this is disputed by the counsel for appellants. The answer, however, to this contention is that an inspection of the bonds themselves shows them to be negotiable. But whether they were or not does not affect the right of complainants to a foreclosure. The company issued these bonds with full knowledge of what it was doing, and upon full consideration of the benefits to be derived to it and to the stockholders

702 by such a proceeding. They were paid for it at the face value. The company has had the money. Is there any good reason why it should not pay? Are minority stockholders who knew all about the proceeding in any position to exclaim against the payment or against the proceeding to foreclosure? It is a mere question whether the discontent of a few stockholders can defeat the foreclosure of a mortgage legally and properly given by the company, by the consent and understanding of all concerned, to induce capitalists to advance the money to set the enterprise of consolidation upon its feet and enable it to do business. Possibly Stein received more for the part he performed in obtaining options and promoting the new scheme than he was entitled to. Whether he

received more than an adequate compensation for his labor and expenses would be a matter of opinion. However that may be, it is difficult to see how the rights of the bondholders to foreclosure the trust deed can be affected by such a consideration. He received what the parties had agreed he should receive. There was no fraud and no collusion as is alleged in the answer. All parties representing the different interests went into the enterprise with their eyes open. They all wanted the \$1,000,000 to set up the new concern, and there seems no very good reason why the company should not pay, or why the foreclosure should not obtain. There was no concealment or misrepresentation. The terms of the options, the value of the different properties, the conditions of payment and all other material facts were open and accessible to the company and to each stockholder. As was said by the circuit judge in his opinion: "The Columbia Straw Paper Company parted with its capital stock for what was agreed to be the value of that stock. The property which Stein contracted to give and which he did give or cause to be given to the Columbia Straw Paper Company was what that company agreed to accept for its stock. In that transaction the Columbia Straw Paper Company was in no way wronged. It can have no action to recover on the theory that the stock has not been paid for; nor can any discontented stockholder assert such right for the Columbia Straw Paper Company as against any other stockholder." The suit is not prosecuted on behalf of creditors and there is therefore no question here of the liability of stockholders. Not only was there no evidence introduced to impeach the valuation of the properties transferred to the company but evidence was introduced by the appellees showing the fairness and justice of the valuation and the finding of the master and the court upon these questions is fully sustained by the evidence. Even if there had been an overvaluation that would not affect the result. No doubt in an action by a creditor against a stockholder a gross and obvious overvaluation of property conveyed to a corporation in consideration of an issue of stock would be strong evidence of fraud, as was held in *Coit v. Gold Amalgamating Co.*, 119 U. S., 343. But this is not an action by a creditor against a stockholder, nor is there an evidence of a gross and obvious overvaluation or any overvaluation at all.

Another contention made and decided in the court below was that the bonds should have been produced before the master. It was alleged in the original bill that: "All of the 1,000 bonds of \$1,000 each, with the coupons attached, were duly issued, negotiated and sold, and are now outstanding and valid obligations of the defendant, Columbia Straw Paper Company, and the same, with the coupons annexed thereto, have come into the possession of, and are now held by a large number of persons who have become the owners thereof," and this was admitted by the defendant company in their answer. The testimony for complainants shows that the bonds described in the mortgage were certified and issued by the defendant company; that the company had not paid any of them; that the interest coupons due January 1, 1895, have not

been paid. The master found that all the issue of said 1,000 bonds was negotiated and sold and is now outstanding, and is valid obligation of the defendant company, and that they were due and unpaid. The court also so found and ordered a sale unless payment was made within a specified time. The trustees were not the owners of the bonds or any part of them, but they were mortgagees in possession and had power under the trust deed to enforce the lien by foreclosure and sale. In these cases where bonds issued by railroads or other large corporations on a large scale and held in trust by trustees, but really owned by persons in many parts of the civilized world, it has not been the practice, nor would it be practicable to require the bonds to be produced before the court or master before a decree *nisi* is entered. The practice has uniformly been to enter a decree of sale without the production of the bonds. Of course they cannot be paid or share in the proceeds of sale until brought into court for payment and cancellation. In many cases years elapse after a decree is entered before all the bonds are brought in, the money lying in the registry of the court awaiting their presentation for payment, and in some cases all the bonds are never produced or paid. If the rule required all the bonds to be produced before the court or master before a decree for sale could be made, it would in many cases be a practical denial of justice. No such practice has ever obtained to our knowledge. The sale is made for the benefit of all properly concerned. The decree is not

704 final as to the persons or debts entitled to share in the proceeds. When the time for distribution arrives any creditor may challenge the title of the claimant of any bond presented. The course of proceeding in such cases is properly indicated in *Taber v. E. Tenn. R. R.*, 67 Fed. R., 168; *Guaranty Safe & Deposit Co. v. Green Cove Springs*, 139 U. S., 150.

Another contention of the appellant is that there is no evidence of a demand for the payment of interest; but no demand was necessary. It is apparent that the interest was due and had not been paid, and under the conditions prescribed in the trust deed the trustees declared the principal and interest owing to be immediately due. The condition broken was that, if a distress, attachment, garnishment or execution be respectively levied or sued out against the chattels or property of such company, and such company shall not forthwith * * * remove or discharge or pay the same, the trustees shall have power to declare the principal and interest due. Upon this breach of condition the trustees had declared the principal and interest owing upon the bonds to be immediately payable. No other demand was necessary. The complainants' testimony also shows that the interest coupons falling due June 1, 1894, December 1, 1894, and June 1, 1895, had not been paid, and the answer of the defendant company admitted that they had not been paid. It is also said there is no evidence that one-third of the bondholders requested in writing the trustees to declare the principal and interest due and payable; but there seems to be no lack of evidence in the record to support the finding in this respect.

It is also contended by appellants that the taking of the Flanagan judgment and the issuing of execution thereon was not sufficient ground on which to declare the principal and interest of the bonds due, because the judgment was obtained by collusion and was not a sufficient ground under the provisions of the trust deed. We can see but little force in this objection. The defendant had defaulted in the payment of its interest due on the bonds. Flanagan was one of the bondholders residing in New York. He sent six coupons owned by him for collection, which not being paid, were put into judgment by one Leffingwell acting for him; execution was issued upon the judgment, which not being paid, the trustees declared the bonds due and payable. The company was insolvent and unable to pay and made no resistance to the obtaining of the judgment and issuing of execution. But there is no evidence of collusion in the record. Nothing was done either by Flanagan or the company which they had not a right to do. The failure to discharge the judgment and execution was clearly a breach of the conditions of the trust deed which authorized the trustees to declare the entire debt due, and proceed to foreclosure. If the company could have kept up its interest all this would have been avoided. But being insolvent and wholly unable to pay its accruing interest these objections seem somewhat of a technical character in the light of these facts.

There are some other minor objections made to the decree which are contained in the brief of counsel but which were not urged upon the oral argument. We have carefully considered them all, and think they should be overruled. There is but one more contention that we care to notice specifically and that is this: that it was an error for which the decree should be reversed, for the court to strike the appellants' cross-bill from the files. But the answer to this objection is that the appellants were not made defendants and only came in and were allowed to intervene by permission and order of the court. The cross-bill was not an original proceeding on their part. Stockholders are not necessary parties in a bill against the corporation to foreclose a trust deed. They are only allowed to come in under leave of the court where fraud on the part of the bondholders, trustees or other parties has occurred which would affect the right of the trustees to foreclose. *Thomas v. Brownville, R. R.*, 109 U. S., 526. Appellants were not creditors and constituted but a very small part of the stockholders. The court upon petition permitted them to become defendants and put in an answer and cross-bill upon the supposition that their answer might show a state of facts which would defeat or qualify the right of foreclosure. The substance of the answer was, as before stated, that the bondholders had acquired their stock without paying for it, and were indebted to the company for it, and that there was a fraudulent overvaluation of the property. The answer was filed on May 18, 1895, and the cross-bill on the same day. The matters set up in the cross-bill were the same, being substantially identical in averment and phraseology with those set up in the answer, and were clearly matters of defense. There was therefore no need of a cross-bill, and to file such an one

was an abuse of the leave given by the court. For these reasons the court was amply justified in withdrawing its permission and striking the cross-bill from the files. This practice is recognized and fully sustained in *Forbes v. Memphis*, 2 Woods, 523. There was a motion to set aside an order allowing parties to intervene as defendants and to file an answer and cross-bill. The intervenors having, as the court thought, presented a *prima facie* case, orders were made in accordance with their request. The complainant moved to vacate the order and the question was raised whether the applicants should have been allowed to intervene. The court says: "It

706 is questionable whether in any case where suit is properly instituted against a corporation, a stockholder of that corporation can, even on a suggestion of fraud on the part of its officers, come in by way of intervention as a party to that suit and seek to defeat or control the proceedings. An original bill rather seems to be the proper mode of proceeding. And it is in the discretion of the court whether or not to permit the stockholder to become a party defendant in any case where he is not made such by the bill, and as it is held to be an extreme remedy to be admitted by the court with hesitation and caution, I think I ought not to have allowed it in this case, and ought now to withdraw the order for such allowance. The orders for leave to intervene and file answers and cross-bills will be vacated."

The case of *Betts v. Lewis*, 19 Howard, 72, relied upon by appellants, is not in point. That was an original bill filed in the district court for the northern district of Alabama, having the powers of a circuit court, to charge a legacy on property alleged to have come to the hands of respondents, and to be chargeable with its payment. After answer had been filed and while exceptions to one of the answers were pending the respondents moved to dismiss the bill for want of equity and the court ordered it to be dismissed. This was making a motion to dismiss an original bill for want of equity to take the place of a demurrer, which if allowed the court might and ordinarily would grant an amendment to cure the defect if it were curable. It was an original bill which the complainants had a right to bring without any leave granted by the court.

But the rule as we have seen is different in regard to cross-bills which are filed under permission. The permission presupposes that the matter of the cross-bill will be germane to the original bill and such as could not be set up by answer. And if when the cross-bill is filed it appears to violate all these rules and to be an abuse of the leave granted by the court, the court will withdraw the permission and dismiss the cross-bill instead of putting the complainant to his demurrer. This practice seems to be entirely rational and just, and such as a court of equity will approve. The cross-bill was not germane to the original bill which was simply to foreclose a mortgage. It alleged a fraudulent overvaluation of property by the company and by directors and stockholders; that the contract under which the bonds were issued was fraudulent and void; and that the bonds and mortgage were void, all of which was matter of defense and had been set up in the answer. It also alleged a liability on the part of the bondholders

or some of them as stockholders, which if it existed at all could only be enforced at the instance of creditors, in a suit to which all stock-
 707 holders were parties. This was not germane to a bill to fore-
 close a mortgage. If two answers setting up the same matter
 had been put in no one would question that one of them should be
 struck out, and the labeling of one as a cross-bill does not change
 the rule. A cross-bill being an auxiliary bill merely, must be a bill
 touching matters in question in the original bill. If its purpose is
 different from that of the original bill it is not a cross-bill, even
 though the matters presented in it have a connection with the same
 general subject. *Crosse v. De Valle*, 1 Wallace, 1; and a cross-bill
 setting up no defense except what could be set up by answer will
 be dismissed. *American and General Mortgage and Inv. Corp.,
 Limited, v. Morquam*, 62 Fed. Rep., 960. We are satisfied that the
 record discloses no error, and that the conclusions of fact and law
 found by the court below are fully sustained by the evidence.

The decree of the circuit court is affirmed.

And afterwards, to wit: on the same day, on the 24th day of
 May, 1897, in the term and year last aforesaid, appears the follow-
 ing entry:

Before Hon. William A. Woods, circuit judge; Hon. James G.
 Jenkins, circuit judge; Hon. Romanzo Bunn, district judge.

HARRY W. DICKERMAN, Trustee, ET AL.	} 344.
vs.	
NORTHERN TRUST COMPANY, Trustee, ET AL.	

Appeal from the circuit court of the United States for the northern
 district of Illinois.

This cause came on to be heard on the transcript of the record
 from the circuit court of the United States for the northern district
 of Illinois and was argued by counsel.

On consideration whereof it is now here ordered, adjudged and
 decreed by this court that the decree of the said circuit court in this
 cause be, and the same is hereby, affirmed with costs.

708 And afterwards, to wit: on the 25th day of June, 1897, in
 the term and year last aforesaid, came the appellants by their
 counsel and filed in the clerk's office in said court their petition for
 rehearing, which said petition was in the following words and figures,
 to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit.

HARRY W. DICKERMAN, Trustee, ET AL., Appellants,	} No. 344.
<i>vs.</i>	
THE NORTHERN TRUST COMPANY and OVID B. JAMESON, Trustees, Appellees.	

Petition and Brief for Rehearing.

Otto Gresham, John S. Cooper, Robert K. Welsh, solicitors for appellants.

In the United States Circuit Court of Appeals for the Seventh Circuit.

HARRY W. DICKERMAN, Trustee, ET AL., Appellants,	} No. 344.
<i>vs.</i>	
THE NORTHERN TRUST COMPANY and OVID B. JAMESON, Trustees, Appellees.	

Petition and Brief for Rehearing.

Harry W. Dickerman, trustee of the Second National Bank of Rockford, Illinois; F. J. Diem, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, hereby respectfully petition this court
 709 for a rehearing upon their appeal from the decree entered in the court below; and thereupon respectfully submit the following reasons for granting this petition:

I.

The Bonds Should Have Been Produced Before the Master.

In its printed opinion, at page 7, this court holds that: "In these cases, where bonds issued by railroads or other large corporations on a large scale and held in trust by trustees, but really owned by persons in many parts of the civilized world, it has not been the practice, nor would it be practicable, to require the bonds to be produced before the court or master before a decree *nisi* is entered. The practice has uniformly been to enter a decree of sale without the production of the bonds."

The above proposition is so sweeping in its effect, in that it impliedly and practically annuls a principle that decrees are based upon facts *established by evidence*, that we have spent most of our time in examining *all* the decisions of the Federal courts of this Union (district, circuit and supreme) to ascertain when and where such a proposition was first established and since maintained. With a desire to ascertain the truth, and being fully impressed with the deference that should be paid to the opinion of this honorable

court, we have carefully examined the United States Supreme Court reports, all the Federal reports, and also the thirty volumes of Federal cases, which contain all the decisions of the district and circuit courts of the United States prior to the year 1880, the date of the commencement of the Federal Reporter. Our investigation has been so thorough and complete that we believe we are perfectly safe in stating to the court that *no cases* can be found holding the views of this court; and in fact the only cases that can be found bearing on this subject are the two cases in 139 U. S. and 67 Federal Reports, cited by the court in its opinion on page 8, and which, as we read them, are each diametrically opposed in its holding to the views expressed by this court in its opinion. They each hold that the bonds must be produced at the hearing.

The practice to be followed by the courts in the foreclosure of trust deeds is of so much importance, not only to our clients, but to railroad companies and other large corporations, the profession at large, and to the courts, that we feel justified in urging this petition for a rehearing with our best efforts, and somewhat at length.

710 Before drawing the distinction between the two cases cited by the court in its opinion and this case, we must call the court's attention to certain provisions and conditions contained in the trust deed, and in the *form* of bond set out in the trust deed with reference to the principal and interest of the bonded debt and its maturity. Both the conditions of the bonds and the provisions of this trust deed are very peculiar and not often found in ordinary bonds and trust deeds.

1. The principal of the bonds cannot be rendered due and payable before its maturity unless,

(a.) After a default in interest for three calendar months, the bondholders, by notice in writing, calls in the principal sum;

(b.) Or the company is dissolved by a judgment of some court, or the resolutions of its stockholders;

(c.) Or the Northern Trust Company declares the principal due under some power contained in the trust deed.

(Rec., p. 31, condition 4 of bonds.)

2. The security of the trust deed cannot be enforced at all until the trustees first declare *the principal and interest* immediately payable; and they can declare this principal and interest immediately payable only upon

(a.) Default in the payment of principal in any of the bonds for one calendar month after maturity;

(b.) Default in the payment of interest for three months after demand in writing by the Northern Trust Company;

(c.) Default for thirty days after demand for payment of taxes, etc.

(d.) The failure to forthwith pay any execution that might be levied. (Rec., 37; art. 3 of trust deed.)

An examination of the bill, of the evidence and of the briefs of counsel for appellees reveals the fact that the only ground in this case for declaring immediately due and payable, the principal and

711 interest of said bonds is the ground set out in the written declaration of the trustees on page 271 of the record. It is the entering of the Flannigan judgment in the office of the justice of the peace; and the failure to pay forthwith the execution sued out thereon. Therefore, as the trust deed provides on page 37 of the record that its security cannot be enforced simply for the non-payment of interest, but only for the principal and interest together that might be declared due, the gist of the bill, and the only part of the bill to which the answer of the defendant company could be directed, was, and is, the fact whether or not a default had occurred in the payment of the principal and interest under the terms and conditions of the bonds and trust deed securing the payment of the bonds and coupons.

In the bill, at paragraph 9 on page 18, is the allegation: "Further complaining, your orators allege that *by reason of the promises*, they have declared the principal and interest owing upon the said one thousand (1,000) bonds of the aggregate face value of one million dollars (\$1,000,000) to be immediately due and payable." Consequently the only valid "premises" are whether under sub. C, sec. 4, of the bonds (Rec., 31) the Illinois trustee, by the exercise of its powers have caused the principal of the bonds to be due before maturity, and all the averments in the bill concerning the discharge of bonds, and the non-payment of interest amount to nothing, because under the provision on pp. 31 and 37 of the record, no written demand is shown to have been made by either bondholder or trustee for the payment of interest, and a default thereon for the required time after such written demand is requisite to enable either bondholder or trustee to call in the principal sum of the bonds, and the evidence shows that the trustee has not declared the principal and interest due for any of those reasons.

Keeping the above in view, and remembering that the simple non-payment of interest is not a cause for foreclosure under the terms of the trust deed, and that there had been no default in the payment of the principal of the bonds, because none had been declared due until the night of the 22d day of January, 1895, we are prepared to examine the question whether or not the bonds should have been produced at the hearing, to prove that any overdue indebtedness existed, the amount thereof, whether paid or unpaid in part or in full, and if not paid to whom the indebtedness was owing, and whether the trustees' complainant had any interest or *title* in the subject-matter, by the principal being due by reason of the declaration.

712 A corporate bond is the original evidence of two things: (1) the existence of a corporate debt, with an agreement to repay the same upon the terms stated; (2) to some person who holds it (Jones, Corp. Bonds, sec. 170).

The bond is therefore the best evidence of the *amount of the debt*, the *terms* upon which it is to be repaid, and also the *person* to whom it is to be paid. It is unnecessary to cite authority to the proposition of law, that in a court of equity in the foreclosure of a trust deed by a trustee he must prove the material facts of his bill by the

best evidence, and that he cannot produce secondary evidence without giving a valid excuse for the non-production of the best evidence.

If, however, the defendant admits the truth of any material allegation, then no evidence is necessary on that point, because the necessity of evidence is dispensed with. There was a necessity in this case for the complainant to prove the contents of the conditions of the bonds set out on page 31 of the record to support the allegations in paragraph 9 of the bill on page 18 of the record. It cannot be claimed in this case that the defendant company made any admission in its answer dispensing with this proof. The only admission touching on the subject is on page 88 of the record, in the following words: "And also admits the entry of a judgment and issuance of execution, as in paragraph 8 of said bill alleged." There is no admission whatever of failure to pay the executions, or of any declaration of the principal and interest being declared due by the trustees, or of the principal being due by reason of such declaration. In fact, there is no admission on the subject embraced in article 4 of the conditions of the bonds, and therefore under the rules of law, the bonds themselves should have been produced to prove the conditions contained in the bonds, which is the same thing as the terms upon which repayment of the debt is to be made. The court, therefore, had no evidence upon which it could decree the principal and interest to be due, because according to the terms of the bonds on page 31 of the record, the non-payment of interest has no effect upon the maturing of the principal unless a bondholder should give notice in writing, or the Illinois trustee exercise its powers.

Therefore this court in its opinion on page 7, fails to recognize that whether the principal of the debt and the interest was due at the time of the commencement of the suit to foreclose so as to authorize a foreclosure, *depends upon the contents of the bonds themselves*, which were not before the court; and does not depend upon
713 the simple allegations of the bill, and the *hearsay* testimony of Mr. Heurtley that the interest was not paid. Had the bill averred particularly the terms of these bonds, and the answer of the defendant company had admitted that the terms of the bonds were the same as they were averred to be in the bill, then possibly this court could say that there was no need for the production of the bonds to prove what had been admitted; but there was no such admission.

The first case cited by this court (in support of its opinion in holding that "in these cases where bonds are issued by railroads or other large corporations on a large scale, and held in trust by trustees," etc., on page 7 of its printed opinion, it is not necessary to produce the bonds in evidence), is the case of *Toler v. E. T. V. & G. R. R. Co.*, 67 Fed., 168.

From the fact that this court uses the identical language in part of its opinion as is contained in that case, we judge that this court bases its opinion largely on that case.

We now call this court's attention with great earnestness to the fact that this *Toler* case is fully in line with the general rule of evi-

dence, so fully set out in our original brief on pages 39 to 49, which we ask the court to carefully examine. This Toler decision is *really in conflict with the opinion of this court.*

It is a case of a railroad company, with 6,000 bonds of the par value of \$1,000; a trustee holding the security for the payment of them. The complainant filed a bill in equity to foreclose an indenture conveying in trust to a trustee certain shares of stock to secure these bonds, of which Toler, complainant, held only five out of the 6,000. In his bill he alleged that coupons "aggregating \$450,000, are due and wholly unpaid, together with interest thereon, to your orator and other holders of said bonds." (Page 181.) The defendants, including the trustee, all filed answers, *admitting* this allegation. (Page 170.) The trustee also filed a cross-bill, seeking the same relief (page 181), to which answers were filed. Hence, as the court says, that as this is a sufficient allegation of ownership, it follows that it was admitted by all the parties, that there was interest amounting to \$450,000 due and unpaid to the complainant and trustee. There was then no reason to produce the bonds, because there was nothing to prove; it had been all admitted.

For a decree *nisi*, which is only a decree that *unless* the amount found due be paid by a day named in the decree, that the equity of redemption be foreclosed, this was all the proof necessary to support it. *Had it not been admitted, evidence would have been required*, and the best evidence would be the bonds and coupons themselves, and in their absence, properly accounted for, secondary evidence would have been admissible. The sentence that follows: "It is not necessary that the bonds and coupons should be produced before a *nisi* foreclosure decree" was true in that case, because all the proof that the bonds would have presented, had been admitted in that case. The sentence is qualified and explained by the succeeding sentences: "It is only necessary that it shall, at this stage of the cause, appear that there has been a default, and the amount of that default." "This showing has been made." But how had the showing been made? By the admissions in the several answers. Had there been no admissions, the showing would have had to have been made by *evidence*—by the bonds and coupons themselves.

Further down in the Toler decision, the court say: "Such a decree is not to be regarded as final as to the debts entitled to share in the distribution, for any other creditor may challenge the debt, when the claims are produced in the master's office for ascertainment and classification." *Now, note! The decree that the court was referring to was the decree nisi.* This court, however, it is apparent from its opinion at the close of page 7, misunderstood the language, and thought that it referred to the decree after it had been made *absolute*. Through this misunderstanding it has incorporated in its opinion on page 7 all that part about the proceeds of the sale lying in the registry of the court. We call the court's especial attention to this error.

We are right in this view, because the context shows it. The very next sentence, "The decree for a foreclosure only establishes

that there has been a default in the payment of interest," in connection with the next sentence, "It does not establish that the interest is due to any particular persons," explains the meaning of the preceding sentence, which we say, this court perhaps misunderstood. The plain meaning is that if upon a decree *nisi*, the defendant pays the interest found due into court, and thereby saves a decree absolute; that as the fact is not established as to what particular person the interest paid in is due, by the decree *nisi*, the decree *nisi* is not to be regarded final as to the debts entitled to share in the distribution, for any other creditor may challenge the debt when the claims are produced in the master's office for ascertainment and classification. These claims are produced by (as it is said earlier in the opinion) each "claimant of a bond or unpaid interest," identifying "himself as the owner of bonds and coupons unpaid."

715

And this is the stage of *nisi* foreclosure decree (*rendered on admissions of the default and amount thereof*) when the production of bonds are necessary. But had there been no admissions, their production would have been necessary *before* the decree *nisi*.

In the Toler case the court also say: "Should a decree of sale (*nisi*) be made *absolute*, the holders of bonds can then be required to produce their bonds and coupons before a master, and all questions connected with the amount due each, and of ownership, can then be determined."

There is reason for this. When a sale of the property mortgaged becomes necessary, it must be sold to pay out only overdue interest, but also the principal. (Fosdick case, 106 U. S., 47.) This is recognized in the Toler case, for later down in the decision on page 181 is found this sentence: "In default of such payment (amount of interest in the decree *nisi*), the shares held in trust will be sold for the foreclosure of the mortgage, *principal and interest*."

Now the admissions of the answers were only as to \$450,000 of interest being due and unpaid. Consequently proof must be made of the amount of principal, \$6,000,000, and additional interest that would be due and unpaid under an absolute decree of sale, and that is the reason that in the Toler case the court says that in such case "the holders of bonds can then be required to produce their bonds before the master, and all questions (between the complainant, cross-complainant and defendants) connected with the amount due each, and of ownership can be determined." This production was to be *before* the decree absolute, and not *afterwards*, however (as this court is holding). It would be the production of evidence, upon which the decree absolute would be based. Suppose, however, the defendants should come in, and before the production of the bonds as evidence of amount due and ownership, should admit that the whole principal sum is due, together with interest up to date, then and in that event there would be no necessity for the production of the bonds to support the decree absolute, than there was to support the decree *nisi*; because in that event the bondholders could produce their bonds after the sale, so as to participate in the proceeds of sale. The court says: "In case a sale is made, it must

be a final foreclosure of the whole property, the purchase-money taking the place of the trust share. The distribution will be in satisfaction *pro rata* of *all* the bonds, principal and interest." (P. 181, at bottom of page.)

716 Now, in this case under consideration, there was no admission, either in the answer of the defendant company or of the appellants, that the principal sum was due, or that it was unpaid; and therefore evidence was necessary. The best evidence is the bonds themselves, and not the hearsay evidence of a Mr. Huertly, a stranger to, and not an officer of, the defendant company. He swears they are due because they had been declared due by his company, which is a legal conclusion based on the regularity of the proceedings and the contents of the bonds. Whether the principal is due on the declaration, the court is the only judge. This court has quoted on page 7 of opinion an allegation in the original bill, and says that "this was admitted by the defendant company in their answer." It is, however, not the admission of a fact, but of certain conclusions of law. That 1,000 bonds of \$1,000 each were *duly* issued, *duly* negotiated and *duly* sold, that they are now outstanding and valid obligations, are certainly conclusions that the law will either draw, or not draw, depending on the facts which are not admitted nor even to be found alleged in the bill, and which, therefore, could not be admitted. In equity pleadings *facts* and not conclusions of law must be pleaded, and the latter will be disregarded; and if admitted or denied, the admission or denial is of no effect. (Foster Fed. Pract., secs. 69, 146.)

But call them admissions of fact, they do not admit that the principal of these bonds *are due and unpaid*. If they admit anything they admit that they are not due, but outstanding bonds.

This court then says that the testimony for complainants shows that these bonds were certified and issued by the defendant company. So this Mr. Huertly testifies. But as the certification was in writing and indorsed on the bond the bond with the certification ought to have been produced, for that is evidence. The court say that the proof shows that the company had not paid any of the bonds. We answer that there is no evidence that the bonds were due. Also that the coupons due January 1, 1895, have not been paid. We answer that Mr. Huertley testified that he was not aware of their being paid.

The court then say that the master found that all of the issue of the 1,000 bonds was due and unpaid. That is what we are complaining of. The bonds were not produced, and neither the defendant company nor the appellants admitted the fact either in the answers or in the evidence, and the bill alleged only that the trustees had declared them due. In the *Toler* case there was the admission of unpaid interest, as alleged in the bill. In this case it

717 is not even alleged in the bill that they are due and unpaid.

The allegation (Rec., 18) at paragraph 9 is, by reason, etc., the trustees "have declared" the principal due. It does not follow that the principal is due, for it might have been (and our claim is such) that the steps leading to the declaration were illegal, and that

the principal is not due today. The form of bond given in the record does not show these bonds to be due absolutely at any given time before December 1, 1901. (Rec., 30.)

On page 7 of its opinion, this court say: "If the rule requiring all the bonds to be produced before the court or master before a decree for a sale could be made, it would in many cases be a denial of justice."

We do not quite understand this sentence, for the reason that usually in the cases of holders of bonds not receiving their interest promptly, they keep "in touch" with the trustee to know why. But we submit that there will be no denial of justice in this case (except possibly to the defendant company, and these appellants in rendering a decree for more than is owing by a refusal), by requiring these bonds to be produced. According to the form set out in the bill of the bond there is indorsed on the back of every bond a "condition" to which the company and every bondholder is a party. Page 30 reads: "This bond is issued upon and subject to the conditions * * * indorsed thereon," and on page 34 at 11 is one of these conditions, viz: "Any notice may be served upon the bearer of this bond," etc.

The evidence in the record gives the post-office address of the owner of every bond; every one of them lives within three days' reach of the Chicago post-office. The record shows that not a bond will be missing if this court requires notice to be given, unless it is lost or destroyed, in which case secondary evidence cannot be objected to its contents.

The other case cited on page 8 of the opinion is *Guarantee Safe and Deposit Co. v. Green Cove Springs*, 139 U. S., 137.

We have carefully examined this case. Like the Toler case, it recognizes the necessity of production of the bonds in evidence on the "final hearing" of the cause, before an absolute decree of sale. This was a bill in equity for foreclosure of a mortgage filed by the Guarantee Trust Company. The defendants were three several railroad companies, and a number of individuals. The bill set up that \$25,000 of bonds were outstanding and unpaid, and other special matters. Two answers were filed, by which three different defenses were presented, the third being that there were no bonds outstanding, and that the complainant had no interest or title to maintain the suit. A decree was entered in the court below dismissing the bill, but it appears that no opinion was delivered or filed.

In the opinion it is stated, that a few days after the filing of the answers, an order was made referring the cause to a master to notify all bondholders to file their bonds or coupons with the master before a specified day, with power to any party to the suit, or to any person filing bonds to take testimony touching the holding and ownership of the same. The court reserved the right to pass upon all questions of law and fact connected therewith.

Pursuant to this notice, bonds amounting to \$23,000 were filed with the master, and the validity of these bonds became the subject of contention. Testimony was taken thereon. At this point the

court dismissed the bill, evidently on the theory that the bonds were invalid, and the complainant had no interest or title to maintain his suit. On appeal, the supreme court held that the evidence was sufficient to show that the bonds were outstanding, and that the "only fact relied upon to show want of good faith appears to be that these bonds were sold upon the day of the sale of the railroad property under the decree of the State court," etc., and that therefore the decree dismissing the bill should be reversed. The production of the bonds showed that there were bonds outstanding. It was equivalent to the admission in the Toler case.

It appears that the appellants on appeal were not only asking for a reversal of the decree, but also asking the supreme court to go further, and on the record as it appeared in that court, to direct the lower court "at this stage of the case to determine as a finality the amount, validity and ownership of such bonds, or the number which were held bona fide by the present holders." This the supreme court held was not necessary, but that the cause should be remanded to the lower court for further proceedings in conformity with its opinion on all the questions involved in the appeal.

The supreme court then adds, that if the lower court, acting in conformity to the opinion, should proceed to a decree for foreclosure and sale, and therefore have "final hearing" of all matters in controversy between the complainant and defendants, that then the holders of the bonds can be notified to bring them in before the master; and at and upon such final hearing all questions arising on the bill and answers as to their amount and ownership could be settled.

This decision expressly recognizes the fact that the bonds were the evidences of the debt, and must be brought in to prove the debt. It also recognizes that no decree of sale absolutely could be entered without a disposal of the \$2,000 of bonds that had not been produced and no reason given for their non-production.

The fact that \$23,000 of the bonds, out of the \$25,000 alleged by the bill to be outstanding, were actually produced before the master in the lower court, supplied and took the place of the admission of the unpaid interest in the Toler case. In one case the bonds themselves, and in the other the admission proved the case. Then as \$2,000 of the bonds were supposed to be still outstanding, the supreme court refused to direct the lower court to decree finally on the \$23,000 of bonds presented, but directed the court below, if it should decide a decree of sale would be necessary, to let the holders of these \$2,000 of bonds come in with the holders of the \$23,000 already in, and by producing their bonds prove up their amount and ownership.

We respectfully insist that this is the true and correct interpretation of the opinion. If the court should have any doubt of it we are sure that if an opportunity is given to examine the entire record on file in Washington, it will show that the appellants were not only asking a reversal of the decree, but also that the supreme court should summarily instruct the court below to determine finally from the record as it then stood, without any further proceedings, the

amount, validity and ownership of the bonds, and to decree a sale of the property, and that this was refused by the supreme court in the language in the opinion commencing on page 151 with "and that is not necessary at this stage of the case to determine as a finality the amount, validity or ownership of such bonds," etc.

We believe that the court on a second reading of these cases in 67 Fed. Rep., and in 139 U. S., will perceive that they do not hold or indicate the practice to be that the bonds shall not be produced, and that it will reverse the decree below.

720

Offset.

This court should have reversed the court below, and held that the bondholders are indebted under the evidence to the defendant company in the sum of \$2,113,000, and that the same should have been offset against the bonded indebtedness, on an accounting before the master.

On page 5 of the opinion, this court say "the prime difficulty was in the lack of evidence to support the allegations of the answer."

Of course, by the refusal of the other side to produce the books and papers called for, much evidence was not presented.

Our contention is that Stein was the agent of all the promoters. He admitted it. That after the promoters had succeeded in the organization of the defendant company, these promoters, without the knowledge, acquiescence or consent of all the other persons interested, deliberately took out of the treasury of the company \$2,113,000 of the capital stock of the company; and that this was done by a pretended contract of sale of the mills by Stein to the company, which was then in the possession and control of the promoting bondholders, and who were at the time his principals. We think that this is plainly shown by the evidence. We further contended that as they received this original issue of stock, without the consent or acquiescence of the others interested, including these complainants, that under the decisions of the United States Supreme Court, they were chargeable with its par value. This court, however, in its opinion meets our contention by the statements, among others, as on page 5, "probably there was not much market value for the stock." "Every one interested proceeded with his eyes open." "These owners wanted money."

On page 6: "Are minority stockholders, who knew all about this proceedings," etc. "A mortgage given by the consent and understanding of all concerned." "Stein received what the parties had agreed that he should receive." "There was no fraud or collusion as alleged in the answer." "There was no concealment or misrepresentation." "The suit is not prosecuted on behalf of creditors, and therefore there is no question here of the liability of stockholders."

721

We respectfully submit that a careful reading of the evidence plainly shows that there was the fraudulent scheme set up in the answer to which each and every bondholder was a party,

that the giving of the mortgage was a part and parcel of the scheme, and that the appellants and other mill-owners knew nothing of the fraudulent scheme till after this suit was commenced.

We believe that the court has become impressed with the idea that because it believes interest to be due and unpaid, and believes that the company is insolvent, that therefore there is no good reason why a foreclosure and sale shall not be made at once. Of course, this is leaving out of consideration the provisions of the bonds and mortgage that there can be no foreclosure and sale unless the principal is due and unpaid; that is to say, that there can be no foreclosure under this trust deed for merely overdue interest.

We wish to disabuse the mind of this court that the Columbia Straw Paper Company was a failure, and we call the court's attention to the record at pages 146 and 147. Here it will be found that although Mr. Stein sold the mills to the company for \$5,000,000, and although interest was piling up at the rate of \$60,000 a year, yet the board of directors (the record showing them to be bondholders), according to the statement made by the president of the company, expended the following amount of "hard cash" between May 1, 1893, and January 22, 1895, the date of filing the bill, for the following purposes, all for the real benefit of the bondholders and their agent, Emanuel Stein:

Permanent improvements.....	\$90,368 08
Repairs and renewals....	45,826 83
Amount paid to Stein to pay his notes.....	97,000 00
Interest on \$185,000 due by Stein on notes....	17,940 31
	<hr/>
	\$251,135 22

In addition to this was an immense sum of money paid to the commission company, as shown in said report, which commission company was in the interest of the bondholders as shown by the cross-bill which this court holds was properly dismissed.

722

III.

The Cross-bill Should Not Have Been Dismissed.

The object of the cross-bill was not only for a defense, but also to obtain affirmative relief for the defendant company as against the bondholders, growing out of transactions connected with the execution of the bonds and trust deed. Its purpose was to obviate the necessity of what this court suggests in the sentence in its opinion on page 10: "An original bill rather seems to be the proper mode of proceeding." It was also to avoid the multiplicity of suits. It had many averments not found in the answer. We think that it is germane to the original bill, for it attacks the validity of the bonds and trust deed on the ground that they are part and parcel of a fraudulent scheme to withdraw \$2,113,000 of stock from the treasury. The trustees in the original bill represented the bondholders, and the cross-bill was directed against them through the

trustees. Moreover the bondholders were made individual parties and answered. They did not challenge the jurisdiction of the court by demurrer or plea, and only after much testimony had been taken.

We submit that there was no abuse of the leave given to file it, and that it ought not to have been dismissed.

The Flanagan judgment was not ground for declaring the principal of the bonds to be due.

We insist of the correctness of our original brief, and also on our argument on pages 1 to 6 of our brief in reply. This agreement on page 37 of the record, if given the construction that this court has on page 8 of its opinion, is the mere enforcing of a forfeiture under the most distressing conditions in a court of equity, and ought not to be countenanced.

It was a throttling of this defendant company in its business career, which the record shows could have been made a very successful one, had one-half of the money it earned and expended on Stein's notes and improvements been expended on the overdue interest that is being complained of. This poor company was first robbed by its directors to put expensive improvements on the mills for the benefit of the bondholders; and when all was completed, its own trustees came along and in the dark of night choke it to

723 death and take its property away from it: and when it gets into a court of equity, its board of directors tries to admit all its alleged sins of commission and omission in behalf of these bondholders, and when a few of its innocent stockholders protest in this court in its behalf, they are met with the rebuff in the opinion on page 8: "The company was insolvent and unable to pay, and made no resistance to the obtaining of the judgment and issuing of execution." "If the company could have kept up its interest, all this would have been avoided. But being insolvent, and wholly unable to pay its accruing interest, these objections seem somewhat of a technical character in the light of these facts."

We respectfully ask this court to reverse this decree, and to remand the case back to circuit court with instructions to reinstate the cross-bill, order the bonds produced, refer the case back to the master for a full and perfect hearing on the bill and answers, and on the cross-bill and answers.

OTTO GRESHAM,
JOHN S. COOPER,
ROBT K. WELSH,
Solicitors for Appellants.

And afterwards, to wit, on the twenty-sixth day of June, 1897, in the term and year last aforesaid, came the appellees by their counsel, and filed in the clerk's office in said court this reply to petition for a rehearing, which said reply was in the following words and figures, to wit:

724 In the United States Circuit Court of Appeals for the Seventh Circuit.

HARRY W. DICKERMAN, Trustee, ET AL., Appellants,	} No. 344.
vs.	
THE NORTHERN TRUST COMPANY and OVID B. JAMESON, Trustees, Appellees.	

Reply to Petition and Brief for Rehearing.

Dupee, Judah, Willard & Wolf, solicitors for appellees.
Charles A. Dupee, of counsel.

Filed June 26, 1797.

OLIVER T. MORTON, *Clerk.*

In the United States Circuit Court of Appeals for the Seventh Circuit.

HARRY W. DICKERMAN, Trustee, ET AL., Appellants,	} No. 344.
vs.	
THE NORTHERN TRUST COMPANY and OVID B. JAMESON, Trustees, Appellees.	

Reply to Petition and Brief for Rehearing.

I.

Upon the proposition of appellants that the bonds should have been produced before the master prior to the entry of the decree *nisi*, counsel merely rehash their argument made upon the original hearing.

725 In its opinion the court (p. 7) carefully considered and passed upon this question. Every word of the opinion in that regard is fully sustained by the facts in the record and the law applicable thereto.

The controversy in this case was between complainant trustees for bondholders and defendant Columbia Straw Paper Company, which is satisfied with the decree herein. Appellants are merely minority *stockholders*, resisting the payment of what the defendant company concedes to be a valid indebtedness.

The form and contents of the bonds were sufficiently set forth in the bill (Rec., 4-27, *et seq.*). The bill alleged that these bonds were *outstanding obligations* of the company in the hands of a large number of persons. The answer distinctly admitted this (Rec., 87). That they were issued and unpaid was proved by witnesses for appellees (Rec., 269). Exactly the same proof was made on behalf of appellants. (See p. 47, original brief for appellees.)

That the bonds were due, as stated in the opinion of the court (p. 8), was completely established and is not controverted in the petition, except *pro forma* in two lines at the bottom of page 20 of petition.

When, as in this case, the defendant company, liable upon the bonds, admits them to be valid and outstanding obligations, when these appellants as well as appellees allege and make proof to the same effect; when appellees are not bondholders, but merely trustees for bondholders; it is impossible to understand how appellants can seriously contend that the bonds should have been produced before the master prior to the entry of a *nisi* decree such as was rendered in this case.

As this court said, to require such production at such a stage would be a practical denial of justice. As the bondholders are widely scattered, years might elapse before they could or would be brought in. What would be accomplished, either by having the bondholders produce their bonds and then withdraw them, or have them kept out of circulation in the custody of the master?

Why should the record have been cumbered with 1,000 bonds? Not to prove that they were issued and outstanding, since it is not disputed that this has been fully proved by the appellants as well as as by the appellees. Not to prove that they are due, since this is established by the evidence. Not to establish their contents,

726 for this has been done. Not to make sure that distribution be to the right parties, the actual holders, since the distribution will be under the direction of the court and only parties can be distributees who produce their bonds for cancellation or endorsement. Not in obedience to any rule of law requiring their production in any case like this, because there is no such rule.

Counsel conceded (petition, top p. 3) that if it were *admitted* that the bonds were outstanding and unpaid, they need not be produced. They say that in the *Toler* case there was such an admission, an admission that interest on bonds not produced was unpaid, as alleged in the bill. They say (Rec., 16) that there "the admission proved the case." That is, production of the bonds was unnecessary in such case.

But it was admitted here that the bonds were outstanding obligations of the defendant company. It was proved that they were due and this proof could be, and was, conclusively made without the production of the bonds.

In the *Toler* case the court directed but one decree which was that unless the debt was discharged within a given time, the property be sold, when each bondholder would become entitled to his ratable share of the proceeds. The court held that the bonds need not be produced prior to such decree *nisi*.

The decree entered in this case was just such a decree *nisi*.

Counsel say they have examined all the cases in the Supreme and Federal courts since 1880, and that there are no cases bearing on this subject except the two we cited in our original brief. If this be so, then there can be no cases requiring the production of the bonds prior to a *nisi* decree such as was rendered here, and the two cases cited in our original brief certainly are authorities in support of the opposite position. Besides, every Federal judge and master in chancery is aware of the practice which prevails in railroad and other foreclosures where property has been conveyed to secure a

great number of bonds, and that it is as this court stated. That the correctness of such practice is rarely questioned, is shown by the fruitless research of appellants.

727

II.

It does not seem to us that the desultory and discursive remarks of counsel under the head of "offset," and "the cross-bill should not have been dismissed," require further consideration from us.

Respectfully submitted.

DUPEE, JUDAH, WILLARD & WOLF,
Solicitors for Appellees.

CHARLES A. DUPEE, *Of Counsel.*

An- afterwards, to wit, on the 3d day of July, 1897, in the term and year last aforesaid, came the appellants, by their counsel, and filed in the clerk's office of said court their answer to said reply to petition for rehearing, which said answer was in the following words and figures, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit.

HARRY W. DICKERMAN, Trustee, ET AL., Appellants,	} No. 344.
<i>vs.</i>	
THE NORTHERN TRUST COMPANY and OVID B. JAMESON, Trustees, Appellees.	

Reply of Appellants to Appellees' Answer to Petition for Rehearing.

Otto Gresham, Rob't K. Welsh, solicitors of appellants.

John S. Cooper, of counsel.

Filed July 3, 1897.

OLIVER T. MORTON, *Clerk.*

728 In the United States Circuit Court of Appeals for the Seventh Circuit.

HARRY W. DICKERMAN, Trustee, ET AL., Appellants,	} No. 344.
<i>vs.</i>	
THE NORTHERN TRUST COMPANY and OVID B. JAMESON, Trustees, Appellees.	

Reply of Appellants to Appellees' Answer to Petition for Rehearing.

Appellees say, on top of page 2 of their answer: "Appellants are merely minority stockholders, resisting the payment of what the defendant company concedes to be a valid indebtedness."

Whether the appellants are minority stockholders or not does not affect their rights to resist this foreclosure suit if the record shows that they are stockholders who paid par for their stock, if they were

ignorant of the circumstances under which the bondholders required \$2,113,000 of stock without any payment therefor, and have not acquiesced therein.

Morawetz Priv. Corp., sec. 286.

This court, in its opinion, on page 6, say :

"Are minority stockholders, *who knew all about the proceeding*, in any position to complain against the payment, or against the proceeding to foreclose?"

We submit that the court and appellees are mistaken as to what the record contains in regard to the knowledge of the appellants.

In their answer (Rec., 111,) is the following averment:

"And these defendants further aver that the giving and issuing of said stock as a gratuity with said bonds, and without any consideration therefor, as aforesaid, was kept a secret from these defendants and from the other owners of mills who had agreed under their options to sell said mills to said Beard and Ramsdell prior to the said 31st day of December, 1892, and that none of these defendants did, as such stockholders, or otherwise, participate in
729 any of the acts complained of, and they aver that they are not transferees of stock with knowledge of the stockholders who did participate therein; and since the acts complained of have come to their knowledge they, or either of them, have not acquiesced therein."

In the evidence is the following proof:

At Record page 385, Stein, Beard, Untermeyer and Wolf are shown by Stein himself to be the prime promoters of the enterprise. These appellants and the other mill-owners had nothing to do with the promotion of the organization. See, also, pages 386 and 387.

Nowhere in his lengthy examination does Stein swear that these appellants had any knowledge of the manner in which the bondholders obtained this \$2,113,000 of common and preferred stock without any payment therefor, and Mr. Stein, above all men, is the man who would know the fact if it were true, as he was the middle man acting between the bondholders on the one part, and the mill-owners on the other. Had they known of it, he would have so testified. His evidence tends to show that the promoting bondholders kept even from him many of the inside facts of the organization.

On page 418 of the record, Sherwood, who appears to have acted in behalf of Stein in connecting with the mill-owners, including these appellants, swears that this was the understanding and agreement of all the parties that the entire seventy mill- were to be taken in, and that to do so would absorb all the stock, and on page 420, he testifies that the appellants, and he himself, did not know that the whole seventy mill- were not taken into the defendant company as agreed. On page 435 he testifies to a meeting of the mill men where the statement was made that all the mills were to be in, and that the cost was between three and four million dollars to be paid for in stocks and moneys. On page 448 *et seq.*, on cross-examination Sherwood testifies to a conversation with Stein and others in

which they had stated to him that all of the seventy mills were to be taken in, and on page 453, the reason why he knew the appellants were kept in ignorance of the number of mills that were taken in and the amount of stock that was used for the purpose. On page 418 Sherwood testifies: "Mr. Stein once said in his conversation that he did not want the mills to know about the exact workings, all they wanted them to do was to take this stock." In other words, they were to be *keep* in ignorance.

730 Even Mr. Wolf, one of the promoters, does not testify that the appellants knew that there were less than seventy mills going in, and that this \$2,113,000 of stock which the bondholders took was not to be used in the purchase of the balance of the seventy mills, being thirty-one as had been agreed upon by all the parties. Mr. Wolf knows more than Mr. Stein did about the inside workings of the "scheme."

The option contract on page 605 shows it was the intention of the promoters to take in other mills, and in section 8 of the same contract, on page 608, it is expressly stated that it is the purpose to procure option- on other mills, and in section 9, that the bonds and stock of the corporation is to be used in the payment of the properties, which certainly exclude the idea that the promoters were to take \$2,113,000 of the stock in addition to a mortgage of \$1,000,000 on the plants.

Appellees in their brief on page 2 are in error when they say that these appellants are "resisting the payment of what the defendant-conceded to be a valid indebtedness," and this court is in error on page 6 of its opinion in stating that they are "exclaiming against the payment or against the proceeding to foreclosure." What these appellants are doing is to insist that these bondholders shall pay to the company what they owe, so that a fund can be provided to pay this bonded indebtedness, leaving in addition a million dollars in the treasury of the company to put it on its feet. On page 5 of its opinion this court says: "Assuming that the stock of the new company was of par value * * * is an assumption that would scarcely be warranted." Our answer is that the record shows that the mill-owners received it at par in payment for their mills, and we know of no reason why the bondholders should not be held to the same value on their subscriptions. There are other questions in the record, of course, one of which is that the principal of the bonds is not yet due, and therefore there can be no foreclosure until it is due.

On page 3 of appellees' answer to the petition is this language: "It was proved that they (bonds) were due, and this proof could be and was conclusively made without the production of the bonds." Whether the principal of the bonds was due or not at the time of foreclosure depends upon their terms and conditions. The bonds themselves are certainly the best evidence of what they contain. The court below could necessarily get no information of their contents except through the admission of the defendant company, and of appellants, or from the bonds themselves. What information the court did get, and upon which it based its decree was the

731 allegation in the bill on page 5 of the record, that the bonds were substantially in the form set forth in the trust deed; and in the trust deed at page 30 of the record it recites that the bonds "*are to be substantially in the following form.*"

There is not a syllable of testimony in the evidence that the principal of the bonds was due at the commencement of the suit. On page 271 is a written declaration that the bonds were declared due. The court below, or this court cannot decree simply from this declaration that the principal of the bonds is due, because whether or not this declaration was sufficient to mature them depends upon the terms and conditions of the bonds. This is not a technical objection; it goes to the merits of the whole controversy. The admission of the defendant company that the bonds are "outstanding obligations," viewed as an admission of fact, and not of a conclusion of law, simply admits that they are unpaid contracts of indebtedness. They may be this, and yet not due; and unless due there is no cause of action.

The lower court and also this court seem to have gone on the theory that the form of bond set out in Exhibit A to the bill fixes their terms and conditions. It does not, and even if — does, the ground set out in the written declaration of the record is not sufficient, under the form of bond. The ground there stated is the failure to pay an execution issued on a judgment in favor of Flanagan on six overdue interest coupons. (Rec., 276.) But under the provisions of the form of bond on page 31, and of article 3 of trust deed on page 37, the principal of the bonds due could not be declared due unless there was a default of interest for three months *after demand*, and therefore the trustees could not declare the principal due on a judgment taken for overdue interest without proof being made that these six interest coupons had not been paid during the three months after the written demand had been made for their payment. The whole contract must be read together, and full effect given to each clause. Any other construction nullifies the cautious provisions inserted in the trust deed by the defendant company for its own protection. As the action of the trustees in declaring the principal due amounts to a forfeiture, a court of equity will certainly give such a construction as will not only preserve all the conditions of the bonds and trust deed, but also that which will enure to the benefit of the party against whom the forfeiture is claimed.

As is said in *C. D. & V. R. R. Co. v. Fosdick*, 106 U. S., 47, on p. 79: "The stipulation, nevertheless, is in the nature of a
732 penalty, and may be regarded as *stricti juris*, to be construed fairly and reasonably, according to the meaning of the parties, but leaning, if need be, in any case of ambiguity, in favor of the debtor."

We therefore submit upon the above, that appellees are wrong when they state that proof that the bonds were due "could be and was conclusively made without the production of the bonds."

Respectfully submitted.

OTTO GRESHAM,
ROBT K. WELSH,
Solicitors for Appellants.

JOHN S. COOPER, *Of Counsel.*

At a regular term of the United States circuit court of appeals for the seventh circuit, begun and held at the United States court-rooms, in the city of Chicago, in said seventh circuit, on Monday, the fifth day of October, 1897, of the October term, in the year of our Lord, one thousand eight hundred and ninety-seven, and of our Independence, the one hundred and twenty-second year.

And afterwards, to wit, on the thirteenth day of October, 1897, in the October term in the year last aforesaid, the following further proceedings were had and entered of record, to wit:

WEDNESDAY, *October 13, 1887.*

Present: Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge; Hon. John W. Showalter, circuit judge.

Before Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge; Hon. Romanzo Bunn, district judge.

HARRY W. DICKERMAN, Trustee, ET AL.

vs.

THE NORTHERN TRUST COMPANY, Trustee, ET AL. }

Appeal from the circuit court of the United States for the northern district of Illinois.

It is ordered by the court that the petition for rehearing in this cause be, and the same is hereby denied.

733 United States Circuit Court of Appeals for the Seventh Circuit.

I, Oliver T. Morton, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 732, inclusive, contain a true copy of the transcript of the record and proceedings in the United States circuit court of appeals for the 7th circuit in the case of Harry W. Dickerman, trustee, *et al.* vs. The Northern Trust Company and Ovid B. Jameson, trustee, etc., No. 344, October term, 1895, as the same remains upon the files and records of said United States circuit court of appeals for the seventh circuit.

Seal United States Circuit Court of Appeals, Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, this 22nd day of December, A. D. 1897.

OLIVER T. MORTON,
*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

734 UNITED STATES OF AMERICA, ss.:

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the seventh circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which Harry W. Dickerman, trustee of the Second National Bank of Rockford, Illinois; F. J. Diem, E. P. Hooker, trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson are appellants and The Northern Trust Company and Ovid B. Jameson, trustees, are appellees, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the northern district of Illinois, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed

735 into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 15th day of December, in the year of our Lord one thousand eight hundred and ninety-seven.

JAMES H. MCKENNEY,

Clerk of the Supreme Court of the United States.

736 [Endorsed:] Supreme Court of the United States, October term, 1897. No. 511. Harry W. Dickerman, trustee, *et al.* vs. The Northern Trust Co. & Ovid B. Jameson, trustees. Writ of certiorari. Filed Dec. 22, 1897. Oliver T. Morton, clerk.

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a true and correct copy of the record and all proceedings in the within-entitled case. As witness my hand and official seal this 22nd day of December, A. D. 1897.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

OLIVER T. MORTON,

*Clerk of the United States Circuit Court of Appeals
for the Seventh Circuit.*

Endorsed on cover: Case No. 16,724. Supreme Court of the U. S., October term, 1897. Term No., 196. Harry W. Dickerman, trustee of the Second National Bank of Rockford, Ills., *et al.*, petitioners, vs. The Northern Trust Company & Ovid B. Jameson, trustees. Writ of certiorari & return. Filed January 6, 1898.

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GR. SUPREME COURT, U. S.
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JAMES H. O'KERRY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1897.

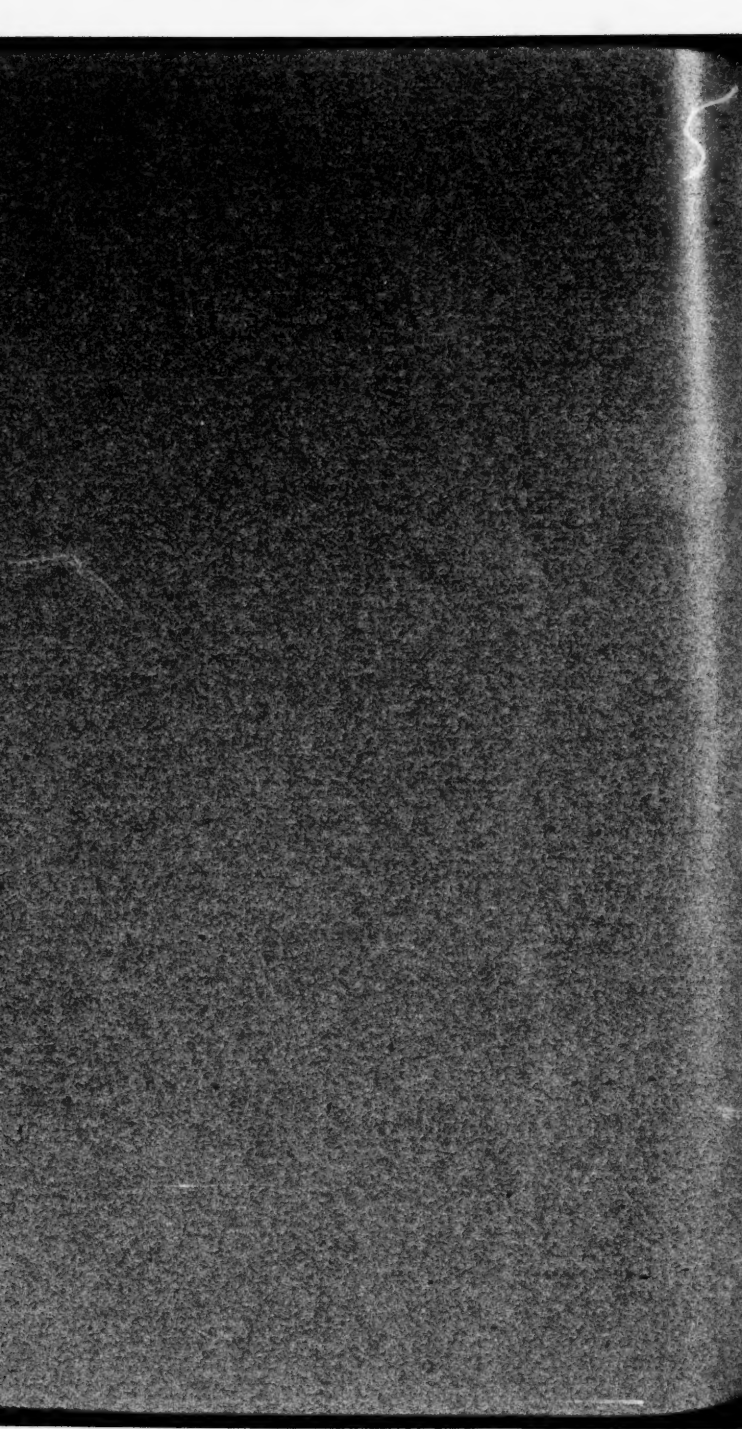
HARRY W. DICKERMAN, TRUSTEE, ET AL.,
Petitioners,

v.

THE NORTHERN TRUST COMPANY AND OVID B. JAMESON,
TRUSTEES, AND COLUMBIA STRAW PAPER COMPANY,
Respondents.

Petition of Harry W. Dickerman, Trustee for the Second National Bank of Rockford, Illinois, Fred J. Diem, E. P. Hooker, Trustee for Merchants' National Bank of Defiance, Ohio, and in his own behalf and James C. Richardson, for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

OTTO GRESHAM,
Solicitor and of Counsel for Petitioners.



2038

IN THE
Supreme Court of the United States.

OCTOBER TERM, A. D. 1897.

HARRY W. DICKERMAN, TRUSTEE, ET AL.,
Petitioners.

Petition for Writ of Certiorari requiring the Circuit Court of Appeals of the Seventh Circuit to certify to the Supreme Court for its review and determination a case of Harry W. Dickerman *et al.*, Petitioners, *v.* The Northern Trust Company and Ovid B. Jameson, Trustees, and Columbia Straw Paper Company, Respondents.

To the Honorable, the Supreme Court of the United States:

Your petitioners, Harry W. Dickerman, Trustee for the Second National Bank of Rockford, Illinois, Fred J. Diem, E. P. Hooker, Trustee for Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, respectfully show to this honorable court:

That the questions involved in the above cause are

questions of gravity and importance and for that reason the power of this honorable court can be properly invoked to require said cause to be certified. (*Ex parte Lau Ow Bew, Petitioner*, 141 U. S. 583.)

In this case, a decree for the foreclosure of a mortgage for \$1,000,000 principal and \$165,049 interest, and for the sale of the mortgaged premises, was entered by the Circuit Court and affirmed by the Circuit Court of Appeals, without any of the bonds representing such mortgage-debt, or any of the interest warrants representing such interest, having been produced before the Master or Court, or their absence accounted for, and without any stipulation or admission being contained in the mortgage or bonds or pleadings which would render such evidence unnecessary.

At a time when none of the bonds were due, either by their own terms or by the provisions of the mortgage, the trustees declared all of them due on the sole ground that a judgment before a justice of the peace for less than \$200 had been taken against the mortgagor-corporation, and an execution immediately issued thereon, although the judgment was entered by arrangement between the officers of the mortgagor-corporation and the representatives of the trustees and bondholders, and although judgment was entered and execution sworn out after business hours on the very evening on which, a short time later, the whole million dollars of bonds was declared immediately due and payable.

The principal controversy arose over the defense, made by petitioners as stockholders of the mortgagor-company (allowed by the court to come in and defend against the foreclosure), wherein it was claimed by

petitioners that they and defendant company had been wronged by the bondholders, in this, that the former, as owners of various paper-mills, having sold the same and received part of the purchase-price in capital stock of a new corporation, organized by the bondholders, the latter had issued to themselves several million dollars of like capital stock of the new corporation, without paying any consideration therefor; and that it was inequitable for such bondholders, through the medium of a court of equity, to be allowed to sequester all the property of such new corporation for themselves, when they were indebted to that same corporation for unpaid stock, in an amount greater than the amount of their bonds.

It was for the evident purpose of escaping this inquiry that the bondholders and their trustees declined to produce the bonds in evidence.

The evidence in the case, even to the contents of the foreclosed mortgage, discloses without question that the new corporation was organized for the purpose of acquiring and owning all the straw-paper-mills in the Upper Mississippi Valley, embracing nine states, and that thirty-nine mills were acquired by it for the purpose of forming a monopoly in the manufacture and sale of straw paper throughout the United States, as the above region comprised about all the territory in the country in which such commodity was being manufactured.

Other minor grievances are complained of by petitioners, which arose during the progress of the cause in the Circuit Court, and which prevented petitioners from securing the aid of the court in raising issues and introducing evidence thereon. Amongst those was the action of the court in dismissing petition-

ers' cross bill on a mere motion, after the defendants had answered and replications had been filed.

It is submitted, that the statement of facts on page 13, *post*, supported by the record, will conclusively demonstrate that the above is a fair and indisputable statement of the controversies involved, and of the manner in which—as extraordinary as it may appear—the lower courts disposed of the same.

I.

The suit was brought in equity to foreclose a mortgage for one million dollars by the trustees named in the mortgage. The Northern Trust Company and Ovid B. Jameson. The mortgagor corporation, Columbia Straw Paper Company, was sole defendant.

Petitioners, as stockholders of defendant, were allowed to defend against the foreclosure because the mortgagee-bondholders were in control of the corporation, and were not making proper defense. Petitioners, in their answer, while admitting that the bonds secured by the mortgage had been, in fact, executed by the mortgagor-corporation, yet they expressly denied that such bonds were duly issued, negotiated and sold, or were outstanding and valid obligations of the defendant corporation.

The cause was referred to the Master, before whom none of the bonds (1,000 in number), nor any of the interest coupons, were produced in evidence, nor their absence accounted for.

Yet that officer found and reported to the court that all the bonds were negotiated and sold, and were outstanding and valid obligations of defendant corporation, and that they were secured by the mortgage sought to be foreclosed. He further found and re-

ported that there was interest due on the bonds, and unpaid (whether evidenced by interest coupons or not, he did not report), to the amount of \$249,632.86.

For such principal and interest (\$1,249,632.86), he recommended the foreclosure of the mortgage and sale of the mortgaged premises.

The circuit court overruled the exceptions of petitioners taken to the report of the Master in finding and reporting as above, and held, that the production of the bonds and interest coupons, in evidence, was not necessary until after the sale of the mortgaged premises, when the distribution of the proceeds of sale was about to be made.

That view was also taken by the Circuit Court of Appeals, which held (on the theory *ab inconvenienti*), that it would be impracticable to require all the evidence of mortgage-indebtedness to be presented in cases like the one at bar, before entering the decree of foreclosure and sale. (80 Fed. Rep. 450.) On page 455 the court say: *Transcript 702*

"In these cases where bonds issued by railroads or other large corporations on a large scale, and held in trust by trustees, but really owned by persons in many parts of the civilized world, it has not been the practice, nor would it be practicable to require the bonds to be produced before the court or Master before a decree *nisi* is entered. The practice has uniformly been to enter a decree of sale without the production of the bonds. Of course they can not be paid or share in the proceeds of sale until brought into court for payment and cancellation. In many cases years elapse after a decree is entered before all the bonds are brought in, the money lying in the registry of the court awaiting their presentation for payment, and in some cases all the bonds are never produced or paid. If the rule required all the bonds to be produced be-

fore the court or Master before a decree for sale could be made, it would in many cases be a practical denial of justice. No such practice has ever obtained to our knowledge. The sale is made for the benefit of all properly concerned. The decree is not final as to the persons or debts entitled to share in the proceeds. When the time for distribution arrives any creditor may challenge the title of the claimant of any bond presented."

It was urged upon both lower courts, on behalf of petitioners, that, admitting there was evidence before the Master which *prima facie* made a case of a mortgage duly executed, and sufficient mortgage indebtedness outstanding, and other facts to justify a decree of *foreclosure*, yet there ought not to be a *final decree* of sale until the cause should be again referred to the Master to ascertain and report the amount of the bonds and coupons outstanding. That in order to make such finding, the Master must have before him competent, legal evidence of such mortgage indebtedness, viz., the bonds and interest warrants, with the evidence of their respective owners or holders, as to the circumstances under which they came into their ownership or custody.

Petitioners insisted upon such proof, not to delay mortgagees or to throw legal obstacles in their way, but for the purpose of showing upon such examination that the owners and holders of the bonds and interest warrants had come by the same as part of the wrongful scheme to defraud the mortgagor-corporation and petitioners and other honest stockholders.

Their counsel before both courts, as well as before the Master, cited numerous cases where it had been held that, before a decree of foreclosure *and sale* could be ordered (*i. e.*, a final decree), it was indispensable that proof should be made of the amount of the mort-

gage-debt, even (in some cases) where a default had been taken against the mortgagor.

Their contention was there, as here, that it was not a question of what would be the more *convenient* practice, but of *substantive legal requirement*; that the mortgagor had a legal right, before its property should be sold to satisfy its mortgage indebtedness, to have that indebtedness judicially ascertained by legal proof.

Both the Circuit Court and the Circuit Court of Appeals seemed to regard the decree which was entered as a decree *nisi*, and that the *final decree* would not come until the property should be sold, its proceeds paid in and be ready for distribution amongst the mortgagee-bondholders, when the court should come to finally direct the disposition of the proceeds of sale.

But it was submitted for petitioners that this very decree was final as to the mortgagor-corporation; that before its property should be sold, the amount of its indebtedness, under the mortgage, should be ascertained by legal methods; so that if it should elect, it might pay the very amount thereof and prevent a sale; or, if a sale should be made, the amount necessary to be produced on such sale should be judicially ascertained. Because, from such sale, the defendant corporation could redeem in twelve months, by paying the amount of the sale with interest; and, for any deficiency, the defendant company would be liable to a judgment.

Counsel for petitioners urged upon the lower courts, as well as upon the Master, that for the Circuit Court to order a sale of the mortgage premises, before requiring legal evidence of the mortgage debt, with the purpose, as announced in the opinion of the learned Circuit Court of Appeals, of afterward requiring such evidence when the proceeds of the mortgage sale should be ready for distribution amongst the bondholders,

would be to postpone an indispensable legal requirement in disposing of the controversy between mortgagees and mortgagor until it would be *too late* to afford the latter any redress, in case the Master and the Circuit Court had *estimated* the mortgage debt at too great a sum; that in the foreclosure of a mortgage in equity, in addition to a judicial finding that the mortgage is a valid lien, it is also essential that the amount of the mortgage debt be ascertained; and that this must be done by legal evidence. In this case the mortgagor-corporation was decreed to be indebted for the full amount of the mortgage-debt, and to pay the same in ten days; in default of which the entire mortgaged premises were directed to be sold by the Master. Such a decree is certainly a final one, so far as the mortgagor is concerned. Whatever may be the result of any subsequent controversy between the bondholders over the distribution of the proceeds of sale can not concern the mortgagor, because it will not be a party to such controversy. Its indebtedness has been fixed; its property will have been sold to pay that indebtedness; and if, in the subsequent distribution of the proceeds of sale, it shall be found that the indebtedness was fixed at too great an amount, that discovery will come at too late a stage in the proceedings to give the mortgagor any relief.

That the above propositions are supported by the decisions, we refer the court to the following cases :

Dowden v. Wilson, 71 Ill. 485, 487-488.

Moore v. Titman, 35 Ill. 310.

Lucas v. Harris, 20 Ill. 166.

George, Admr., v. Ludlow, 66 Mich. 176.

Biers v. Hawley, 3 Conn. 110.

Field v. Anderson, 55 Ark. 546.

Schumpert v. Dillard, 55 Miss. 348, 363.

2 Jones on Mort., § 1469.

Shellaber v. Robinson, 97 U. S. 68. (Trust deed in equity is a mortgage.)

The learned Circuit Court of Appeals, it is submitted, was in error regarding the cases of *Guarantee Trust Co. v. Green Cove Springs and M. R. Co.* (139 U. S. 150) and *Toler v. Railway Co.* (67 Fed. 168).

In the former case this Court held that there was sufficient evidence before the court below to enable the plaintiff to maintain its bill, and that therefore it was error for that court to have dismissed the bill. This Court said: "Should the court proceed to a decree for foreclosure and sale, the holders of the bonds can be notified to appear and file them before the Master, and all questions connected with their amount and ownership can be settled upon a final hearing."

In the case of *Toler v. Railway Co.*, *supra*, the distinction between a decree for foreclosure (in the nature of an interlocutory decree) and a decree for a foreclosure and sale (a final decree) is clearly pointed out. The court say (p. 181): "Should a decree of sale be made absolute, the holders of bonds can then be required to produce their bonds and coupons before a master, and all questions connected with the amount due each, and of ownership, can then be determined." * * * "The decree for a foreclosure only establishes that there has been a default in the payment of the last three installments of interest." And the court thereupon directs a decree *nisi* to be drawn.

That the decree entered in this cause was, a final hearing of this cause, consummated by a final decree, see:

Forgay v. Conrad, 6 How. 201.

Railway Co. v. Swazey, 23 Wall. 405.

Grant v. Insurance Co., 106 U. S. 429.
R. R. Co. v. Soutter, 2 Wall. 440.
Blossom v. R. R. Co., 1 Wall. 655.
Hinckley v. R. R. Co., 94 U. S. 467.
Ray v. Law, 3 Cranch 179.
Bronson v. R. R. Co., 2 Black 524.
R. R. Co. v. Fosdick, 106 U. S. 47.
First National Bank v. Shedd, 121 U. S. 74.
Bostwick v. Brinkirhoff, 106 U. S. 3.

It is therefore respectfully submitted that this is the only case to be found in the books, of a decree for the foreclosure and sale of mortgaged premises being allowed to stand, where no evidence was introduced of the amount of the mortgage-debt by the production of the instruments representing the same, or their absence being accounted for, and where there was no waiver by the contract of the parties or by their stipulations in the pleadings.

II.

The respondents, in their bill of complaint, alleged that, "on or about the 22d of January, 1895, an execution was duly sued out against the chattels and property of said defendant Columbia Straw Paper Company, upon a judgment obtained against said company, by James Flanagan, before George W. Underwood, justice of the peace, Cook county, Illinois, and the said defendant Columbia Straw Paper Company has failed to remove, discharge or pay such execution, although duly requested so to do." (Rec., p. 18.)

The transcript of the record of above mentioned judgment, introduced in evidence by respondents, shows

the suit commenced on January 22, 1895; summons issued returnable January 28, 1895; served upon the president of the defendant company at 5 o'clock P. M. of that day; ^{that is the 22nd} the appearance of such president before the justice, and consent to go to immediate trial, and judgment for \$180 and costs of suit, and immediate execution sworn out. (Rec., 275, 276.)

The execution came into the hands of the constable on the same day, at 5:24 o'clock P. M., and two months after was returned by that officer, "*nulla bona*"—without any levy being made, or any demand on the defendant in the execution for payment. (Rec., 277.)

Later on the same day, January 22, 1895, the following instrument was executed by respondents:

"CHICAGO, January 22, 1895.

"*To Columbia Straw Paper Company:*

"A judgment having been entered against you in the court of George W. Underwood, justice of the peace for Cook county, Illinois, on the 22d day of January, 1895, in favor of James Flanagan, and execution upon said judgment having been sued out against your property, and you having failed to forthwith remove, discharge or pay said execution, the undersigned as trustee under the trust deed executed by you to them under date of December 31, 1892, do hereby declare the principal and all interest owing upon the one thousand bonds named and described in said trust deed to be immediately payable.

"(Signed)

"THE NORTHERN TRUST COMPANY.

"By BYRON L. SMITH, its *President*.

"Attest:

"ARTHUR HURLY, *Secretary*.

"OVID B. JAMESON."

} *Trustees.*

(Rec., p. 271.)

There was no evidence introduced that the above declaration was ever delivered to, or came to the

knowledge of, any of the officers or agents of the mortgagor-corporation.

On the evening of the same 22d day of January, 1895, respondents took possession of the property, including a large number of the paper mills of defendant mortgagor-corporation. (Rec., pp. 288 and 289.)

Two days later, on the 24th of January, 1895, respondents filed their printed bill of foreclosure in which they relied upon the above judgment, execution and declaration to foreshorten and make immediately due the whole \$1,000,000 of bonds. (Rec., pp. 1, 18.)

In short, the record discloses that on account of an execution being issued by a justice of the peace for less than \$200 after the close of business hours, the respondents, later in the same evening, declared due a mortgage indebtedness of \$1,000,000, none of which was due, and a large part of which could not become due for many years, and that, standing upon such action, respondents, two days later, filed their bill to foreclose that mortgage, and have actually obtained their decree for a sale of the mortgaged property to pay the entire amount of the mortgage debt.

That such hot haste, under such peculiar circumstances, is not favored by the courts. See:

Union Mut. L. Ins. Co. v. Union Mills Plaster Co., 37 Fed. 289.

Inman v. West. Fire Ins. Co., 12 Wend. 452.

Bennett v. Lycoming, etc., Ins. Co., 67 N. Y. 274, 276-277.

Noyes v. Clark, 7 Paige 170.

III.

The answer of your petitioners set up, as an equitable set-off to the amount that might be found due from

the mortgagor corporation to each bondholder on account of his bonds and coupons, an indebtedness owing by said bondholder to said mortgagor corporation on his subscription to the capital stock of the corporation *as an original subscriber.*

The facts alleged in the answer showed that the issue of the bonds and of all the capital stock of the corporation to your petitioners and others, in payment for the paper mill plants and to the bondholders, was one and the same transaction. That at the time the bonds were issued and paid for, the stock was issued to these petitioners who paid full value for it. That at the time of issuing the bonds, the company, by its board of directors, who were in the complete power of the bondholders, issued \$2,113,000 of the capital stock to these bondholders, who took and now hold the same, all without any consideration therefor and without the knowledge, acquiescence or ratification of these petitioners, and other stockholders paying full value, and that the issue of such stock had been kept a secret from them.

The following is a correct statement of the facts in the case.

STATEMENT OF THE CASE.

1. This was a suit brought January 24, 1897, the Circuit Court of the United States for the Northern District of Illinois, to foreclose a trust deed dated December 31, 1892, securing an issue of 1,000 bonds of \$1,000 each, aggregating \$1,000,000. This trust deed was made to The Northern Trust Company and Ovid B. Jameson, Trustees, by the Columbia Straw Paper Company, a corporation incorporated under the laws of New Jersey. A receiver was appointed under this bill,

and ancillary proceedings were immediately begun in the United States Circuit Courts for the Southern District of Illinois, the Western District of Missouri, the Southern District of Wisconsin, the District of Michigan, the District of Indiana, the Southern District of Ohio, the Northern District of Ohio, the Southern District of Iowa and the District of Nebraska.

2. The petitioners are stockholders of the Columbia Straw Paper Company, and as such were permitted to become parties to the suit (Rec., p. 91¹²⁵) May 13, 1895, on showing that the Columbia Straw Paper Company was making no defense to the suit.

3. In 1890 a syndicate was organized for the purpose of acquiring all the straw paper mills in the United States, at that time seventy in number, the object being to form what is in commercial language termed "a trust." The panic of that year caused the scheme to be abandoned, and the options which had been secured on the mills lapsed. (Rec., p. 413.)

4. In 1892 this claim was revived headed by one Philo D. Beard, who became the president of the Columbia Straw Paper Company on its organization, and Samuel Untermeyer of the law firm of Guggenheimer, Untermeyer & Marshall, whose business was that of promoting enterprises involving large aggregations of capital. (Rec., p. 417.) After the organization of the mortgagor company the firm of Guggenheimer, Untermeyer & Marshall became its general counsel in the city of New York, and they employed the firm of Dupee, Judah, Willard & Wolf to aid them in acquiring the mills referred to.

5. In order to get the mill owners into the combination, a form of option was prepared by Samuel Untermeyer providing that a corporation was to be organized under the laws of New Jersey, with a capital of \$4,000,-

000, divided into \$1,000,000 of preferred stock and \$3,000,000 of common stock; it also provided that the corporation might, if found necessary, issue bonds to the amount of \$1,000,000. The options ran to Philo D. Beard and Thomas T. Ransdell, of Buffalo, New York, and provided that they should provide all the means necessary to finance the corporation to be organized. (Rec., p. 607.)

6. Options were secured on thirty-nine of the seventy mills, with their good-will, for \$2,788,000, payable as follows: \$766,000 in cash, \$629,000 in preferred stock, \$1,258,000 in common stock, and \$135,000 in notes of the corporation to be organized.

7. October 14, 1892, Thomas T. Ransdell assigned his interest in the options, without any consideration, to Emanuel Stein, and afterwards Beard, without any consideration, assigned his interest in the option also to Stein (Rec., p. 372), and Stein, under the instructions of Beard and Untermeyer, accepted the options. On December 6, 1892, the Columbia Straw Paper Company was organized under the laws of New Jersey, with a capital stock of \$3,000,000 of common stock and \$1,000,000 of preferred stock, with authority to issue bonds amounting to \$1,000,000.

8. Immediately following the organization and prior to December 14, 1892, the incorporators elected as a board of directors the following persons: Philo D. Beard, William C. Heppenheimer, William C. Taylor, Maurice Untermeyer, Moses Weimann, J. C. Guggenheimer, T. L. Herman, Harry C. Manheim, Samuel H. Guggenheimer (Rec., p. 192). Of these Maurice Untermeyer and Moses Weimann were members of the firm of Guggenheimer & Untermeyer; William C. Taylor, J. C. Guggenheimer, T. L. Herman, Harry C. Manheim and Samuel H. Guggenheimer were clerks in the office

of Guggenheimer & Untermeyer; William C. Heppenheim was a lawyer residing at Jersey City, in the state of New Jersey, as it was necessary under the laws of that state that there be at least *one* resident director.

9. On the 14th day of December, 1892, Emanuel Stein, who held the options for the benefit of the promoters, and who, to use his own language, "was the conduit" through whom they acted (Rec., p. ~~398~~), at their instance (Rec., p. 376), made a proposition in writing to the Columbia Straw Paper Company (Rec., p. 485) to transfer to it the thirty-nine mills, and received in payment therefor its entire capital stock, less a few shares issued to the incorporators, and the entire authorized issue of bonds of the defendant corporation. This proposition was drafted by Samuel Untermeyer (Rec., p. 376), a copy will be found in the record at page 485. This proposition was accepted by the defendant company on the following day and was then embodied in the form of a contract between the corporation and Stein.

10. It was represented to the mill owners when they gave their options on their mills that the entire seventy mills were to be taken into the combination and pass into the hands of the corporation, as on the basis proposed in 1890 seventy mills would have required and absorbed the stock of the corporation of \$4,000,000 (Rec., p. 418). An examination of the amounts named in the options show that the thirty-nine mills were to be acquired for and were actually acquired for \$766,000 in cash, \$1,887,000 payable in stock, leaving a surplus of \$2,113,000 of stock.

11. Stein testifies, and he is nowhere contradicted, that prior to the transfer of the mills pursuant to the options, the promoters, Beard & Untermeyer, ^{and others} agreed that this \$2,113,000 of stock should be issued and di-

vided amongst themselves (Rec., p. 393); that they would put up \$1,000,000 on the bonds of the corporation and make the cash payment to the mill owners according to the options (Rec., p. 392). Samuel Untermyer collected the money from the parties who subscribed to the bonds and who held the same at the time this suit was instituted, and placed the same in his name in The Northern Trust Company in Chicago (Rec., pp. 388 and 577), in order to provide Stein with the funds necessary to meet the cash payments according to the options at the time the mill owners conveyed their property to Stein and wife, and Stein and wife conveyed to the Columbia Straw Paper Company, which were contemporaneous transactions.

12. The mill owners, including these petitioners, did not know that Untermyer, Beard and the other promoters were appropriating to this end \$2,113,000 shares of the capital stock of the defendant company without paying therefor (Rec., p. 420). This fact did not become known to these petitioners until after the suit to foreclose the mortgage was instituted.

13. In order to make the combination originally contemplated by the acquisition of the seventy mills the officers of the Columbia Straw Paper Company soon afterwards organized, under the laws of New Jersey, a corporation known as the Paper Commission Company. The function of this corporation was to handle the straw paper manufactured by all the straw paper manufacturers in the United States, which acquired the right to handle the entire product of the Columbia Straw Paper Company and of the thirty-one mills which did not become the property of the Columbia Straw Paper Company (Rec., p. 437). Instead of purchasing these thirty-one mills with the \$2,113,000 of stock as was originally contemplated, the promoters ar-

ranged through the scheme of the Paper Commission Company to control the product of these thirty-one mills and appropriate to their own use, without giving any consideration to the defendant company, this \$2,113,000 of stock.

The court below (Rec., p. 72, 80 Fed. 453) says that "The main question is, whether there is any liability "on the part of the stockholders in defendant company which can be enforced in this proceeding, or "set up as a reason for defeating the foreclosure. We "are of opinion that these contentions made by the "defendants were properly overruled. The prime difficulty was in the lack of evidence to support the "allegations of the answer. There was no evidence "of any fraudulent overvaluation, or of issuing stock "without consideration."

And the court further says (Rec., p. 72, 80 Fed. 454), "The suit is not prosecuted on behalf of creditors, "and there is therefore no question here of the liability of stockholders."

With due and becoming deference to the opinion of the Circuit Court of Appeals we submit that the record does show, clearly and without contradiction, that the bondholders, represented by Untermeyer & Wolf, first suggested the idea of consolidation of the mills in 1892 to the mill owners. The letter of Untermeyer (Rec., p. 511), the option contract (Rec., p. 604), the testimony of Stein (Rec., p. 371) and of Sherwood (Rec., p. 414) all show it. The option-contract and Sherwood's testimony (Rec., p. 415) showed that it was agreed between petitioners and the bondholders represented by Stein, that *all* the stock was to be used in buying all the seventy milling plants instead of only thirty-nine. The testimony of Stein and the

exhibits show that \$2,113,000 of stock was handed over to the bondholders as a gratuity. The option-contracts show that they were obtained for the benefit of the new company to be organized, and not for the benefit of Beard, Ransdell or Stein or the bondholders and that no more was to be paid for the mills than the option called for. Ransdell's sworn answer (Rec., p. 253) states this positively. Stein, Wolf, Beard, the bondholders and the board of directors all knew that the transfer to Stein and from Stein to the company was unnecessary and unexpected under the option contracts, and the only necessity of it was to get from the treasury of the company into the pockets of the bondholders *by form of legal contract* this surplus stock of \$2,113,000 without any consideration; whereas, under the original agreement with the petitioners it was to be used in purchase of those thirty-one mills that were not purchased as agreed with the promoting bondholders, but which were afterwards tied up in consolidation with defendant company by means of what is known as the Paper Commission Company (Rec., p. 438).

By accepting this original issue of stock, each bondholder is liable for the full amount of the same. It is not necessary that there be an express subscription.

Webster v. Upton, 91 U. S. 65.

Upton v. Tribilcock, 91 U. S. 44.

This is the rule in reference to an original issue, although it is different in the purchase of stock in the open market, on a "going concern."

The act of the board of directors, in issuing this \$2,113,000 not having been assented to, acquiesced in or ratified by the petitioners, the latter in equity, under

the averments of their answer, have the right to compel each bondholder to allow his indebtedness to be set off as against the indebtedness on his bond and coupons.

Cook on Stockholders, section 701 (3d edition).

The transaction concerning this original issue of the \$2,113,000 of the stock to the bondholders, without consideration, under an agreement made in advance of the organization of mortgagor corporation, and carried out after organization by an abuse of fiduciary relations to that company, amounts to this:

The bondholders subscribed for \$2,113,000 of original issue of stock, and instead of payment therefor, secured an agreement from the directors, *under their complete control*, that the company, for \$1,000,000 advanced on their subscriptions, would give them a mortgage on the whole plant of the company, whereby the company was to pay back to them the money they advanced on their subscriptions.

See *Morrow v. Iron and Steel Co.*, 87 Tenn. 262.

Sawyer v. Hoag, 17 Wall. 610.

The mortgagor-corporation could not give away its stock as against non-assenting stockholders, any more than as against creditors.

Cook Stockholders (3d ed.), § 41.

Morawetz on Priv. Corp., §§ 270, 286, 288.

At § 286, Mr. Morawetz tersely states the rule: "Every shareholder in a corporation is entitled to insist that every other shareholder shall contribute his ratable part of the company's capital for the common benefit." * * * "It would be a plain viola-

“tion of the equitable rights of those shareholders who
 “have contributed the amount of their shares in full,
 “to allow any persons to have the benefits of member-
 “ship, without adding the amounts of their shares to
 “the company’s capital.”

The circuit court should have refused to foreclose the mortgage for the bondholders, until they had paid the mortgagor-company the amount of their unpaid stock subscriptions.

IV.

After the taking of testimony before the Master, the respondents filed an amendment to their answer on February 9th, 1896. The amendment is in full in the Record, pp. 316 to 322. On March 4th the court refused to allow the amendment to be made (Rec., p. 325). The purpose of the amendment was to conform the pleadings to the proof, and to set up as a defense to the bill the fact that the execution of the bonds and mortgage was a part and parcel of a scheme to form an illegal combination in restraint of trade, commonly known as a trust.

The circuit court, sitting as a court of equity, as soon as the contents of the amendment was made known should have, *sua sponte*, allowed it to be filed. Courts of equity ought not to, and will not, enforce illegal contracts, but will leave the guilty parties where they find them. A good illustration is the case of *Richardson v. Buhl*, 77 Mich. 632, where the court acted voluntarily, as soon as it learned the contract under consideration was made in pursuance of the formation of a “trust.”

That the defendant-company, Columbia Straw Paper Company, was an illegal combination is shown by

(1) Letter of Untermeyer to Wolf (Rec., p. 511).

- (2) Sworn answer of Ransdell (Rec., p. 252).
- (3) Recitals in mortgage, "Exhibit A," to bill (Rec., pp. 24 and 27).
- (4) Stein's proposition to board of directors (Rec., p. 485).
- (5) Agreement between Stein and Company (Rec., p. 489).
- (6) Paper Commission Company (Rec., p. 495) formed to take in balance of mills (Rec., p. 507).
- (7) Sherwood and Stein's testimony (*passim*).

Even if the court would not admit the amendment, *sua sponte*, it ought to have done so ^{on the motion} ~~over objection of~~ *complaints of the defending stockholders.*

C. & M. & St. P. Ry. Co. v. Third National Bank of Chicago, 134 U. S. 276, pp. 288 and 289.

Starr and Curtis' Illinois Statutes, 1896, p. 1252.

Acts of Illinois, 1891, p. 206, section 5.

Acts of Illinois, 1893, p. 182, section 8.

U. S. Statutes at Large, 1890, p. —.

V.

The cross-bill was filed under leave of court granted upon a petition (Rec., p. 105) prepared according to the 94th equity rule. It asked affirmative relief, not for violation of any personal equitable rights of your petitioners (as was the case of *Forbes v. R. R. Co.*, 2 Woods 323, Fed. Cases No. 4926, cited as authority by the court below), but for and in behalf of the defendant company, mortgagor, whose board of directors was under the control of the bondholders, represented by the respondent trustees, and which company had filed an answer denying nothing in the bill.

The cross-bill was filed May 18, 1895 (Rec., p. 122), and the respondent trustees, the defendant company mortgagor, and certain of the bondholders, who were original promoters of the company, were made parties defendant. (*Braden v. Prime*, 14 Blatchf. 371, Fed. Case No. 1810.)

The respondent trustees, complainants, answered, as did almost all the defendants. (Rec., pp. 159 to 200 and 211 to 257.) Replications were filed by your petitioners to each of the answers. (Rec., p. 201 to 205 and 257 to 263), the last being filed on September 16, 1895.

January 13, 1896, the Circuit Court sustained the motion of complainants to strike the cross-bill from the files. (Rec., p. 314.)

The court below, as we understand from its opinion, bases its action in sustaining the Circuit Court in striking the cross-bills from the files on the following propositions:

- (a) That your petitioners were defendants only by the permission and order of court. (80 Fed. 456.) *R 705*
- (b) That the matters set up in the cross-bill were substantially those set up in the answer, and, therefore, there was no need of a cross-bill. (80 Fed. 457.) *R 705*
- (c) That the rule regarding the filing of cross-bills by permission is different from the rule in regard to filing original bills, which can not be dismissed on motion. (80 Fed. 457.) *R 706*
- (d) That matters in cross-bill were not germane to matters in original bill. (80 Fed. 457 and 458.) *R 707*

We first submit that, no matter under what circumstances a cross-bill is allowed to be filed in a cause, if once filed, an answer filed to it, then the cross-defendant has waived whatever right he may have had to move to strike it from the files. *A fortiori*, where replication is filed, and the cause at issue.

Payne v. Cowan, 1 Swed. & M. Chan. (Miss.)
35.

Glegg v. Leigh, 4 Madd. 191.

Betts v. Lewis, 19 How. 72.

- (a) That your petitioners were made defendants only by permission of the court, and the cross-bill was filed under leave.

The court below justifies its action in sustaining the Circuit Court in dismissing the cross-bill on the decision in *Forbes v. Railroad Co.*, 2 Woods 323, Fed. Cas. § 4926.

But there is a wide distinction between these causes. In the *Forbes* case, the defendants filing cross-bills were seeking affirmative relief on behalf of their own private interests and not on behalf of the corporation. It was their individual equitable rights, and not those of the corporation, which were claimed to be invaded. The motion to dismiss went to the action of the court in allowing them to be made parties at all. In this cause, the matters set up in the petition and alleged in the cross-bill, which was verified by oath, were set up under the provisions of Equity Rule 94. The cross-bill is "founded on a right which may properly be asserted by the corporation." The averments of the cross-bill, with reference to the refusal of the company to assert its rights, were material averments. If insufficient in equity, the question could be raised by demurrer and

not by motion to dismiss. When answers were filed, a hearing was the only method of ascertaining their truth. By peremptorily dismissing the cross-bill, as the court did, the corporation has been caused to lose all equitable rights it may have on behalf of its innocent and minority stockholders, which was being urged by this cross-bill against the bondholders represented by the trustees. As is said in *Bronson v. L. & M. R. R. Co.*, 2 Wall. 283, which was decided prior to the promulgation of Rule 94 in Equity. "It would be a reproach to the law, and especially in a court of equity, if the stockholders were remediless."

Another distinction between this cause and the Forbes case, *supra*, is that, in that case the defendants having made a *prima facie* case, they were allowed to defend. But *before* filing cross-bill, a rule was entered against them to show cause why the order permitting them to defend should not be vacated. A hearing was had, and on that hearing the court vacated the order, and expressly did so because there was much doubt whether the defendants were *bona fide* stockholders; that their contention was in behalf of their individual interests, and were *in opposition* to the interests of the company, and they admitted the truth of all the charges of gross fraud on the part of the board of directors of the company *of whom they were a part*.

In this case there is no dispute as to your petitioners being *bona fide* stockholders, nor of their asserting rights on behalf of the company, which is expressly stated to be under the control of the bondholders. Further, in this case a cross-bill has been filed. The action of the court in the Forbes case was the vacating of the order allowing the intervention for good cause shown. In this case the order allowing the intervention is not attacked, but allowed to stand, and the answer of

the intervenors is allowed to remain in and a hearing has been had and decree rendered on the same. Your petitioners are held rightly to be in court, and their answer recognized, but they are deprived of the benefit of their cross-bill on grounds which could only apply to vacating an order for good cause allowing them to intervene.

- (b) That the matters set up in the cross-bill were substantially those set up in the answer, and therefore there was no need of a cross-bill.

We submit that the court below in its decision has failed to recognize that in equity a cross-bill may serve for two very different purposes. Affirmative relief in equity is not granted on an answer. It is granted only on a cross-bill. A cross-bill may be used for defense merely, or it may be used to obtain affirmative relief. In *Lautz v. Gordon*, 28 Fed. 264, the court recognized this distinction by pointing out that, when used as a defense, it may set up a legal as well as an equitable defense, whereas when used to obtain affirmative relief, it must set up facts calling for equitable relief only. In the latter case "the cross-bill is of the nature of an original bill seeking further aid from the court."

We believe the court below to be in error in stating that the answer and cross-bill set up substantially the same facts. The cross-bill contains additional facts to those set up in the answer.

The court is also in error, in stating as applied to this cause, that upon the filing of two answers setting up the same matter, one would be struck out on motion, and that the labeling of one of them as a cross-bill would not change the rule. The sentence does not

express the true statement of facts here. It would be better expressed by saying if two pleadings are filed containing exactly the same matter, and in one of which it clearly appeared that it was filed as a defense to the bill, and in bar of the suit; and in the other it clearly appeared that it was filed for the purpose of obtaining equitable *affirmative* relief; the former would be allowed to stand as an answer, the latter, as a cross-bill.

The cross-bill in this cause set up facts, and on those facts asked for an accounting in equity between the defendant company and the bondholders, represented by the respondents, on account of transactions between them and the company at the time of, and in connection with, the execution of the bond and mortgage. Under the answer, this equitable affirmative relief could not be granted.

Under Equity Rule 90, affirmative relief must be sought by cross-bill, as in the English High Court of Chancery.

White v. Bower, 48 Fed. 187, citing

Noonan v. Lee, 2 Black 499-509;

2 Dan'l Chancery Prac. 1547;

R. R. Co. v. Bradley, 10 Wall. 299.

In *Kingsbury v. Buckner*, 134 U. S. 650, a quotation is made from *Jones v. Smith*, 14 Ill. 229: "No fitter case could be imagined for a cross-bill than the one which is presented by these pleadings. No doubt upon his answer, he (defendant) was at liberty to prove the facts averred, but this would only defeat Smith's (the plaintiff's) claim for relief; while the same facts, if established upon a cross-bill, would entitle him to have satisfaction of the judgment actually entered."

- (c) That the rule regarding the filing of cross-bills by permission is different from the rule in regard to filing original bills, which can not be dismissed on motion.

We respectfully submit to this honorable court that there is no logic or reason why the rule should be different. A cross-bill is in substance an original bill filed by the defendant in the cause to obtain affirmative relief, and also to bring before the court, completely, "the whole matter in dispute." Dan'l Chancery Pr. 1547.

If the permission is once given by the court to be made a defendant in the cause, it follows by all the rules of logic and reason, that he should be allowed, as a defendant, to assert all his equitable rights, and to obtain all his equitable remedies. On what ground can he be considered in court to file an answer, but out of court when he attempts to file a cross-bill? The case of *Forbes v. R. R. Co.*, *supra*, quoted from by the court below, does not hold any such doctrine. The court did not there enunciate the remarkable rule of practice in equity, that the court would allow the petitioner to become a defendant, recognize him as such, allow his answer to stand, and refuse to strike it out as the court below did in this case (Rec., p. 325), but dismiss the cross-bill for no other reason than that the rule is different as to original and cross-bills.

We submit that the rule is not different. That when a stranger to the original suit is once allowed to become a defendant, and files a cross-bill for affirmative equitable relief, then the rule is that his cross-bill must be tested by demurrer, or, if answered, shall go to a hearing, and that there is no more reason why a cross-bill should be dismissed than should an original bill.

- (d) That matters in cross-bill were not germane to the original bill.

Webster defines "germane" to literally mean—near akin; and as a derivative meaning—closely allied—appropriate or fitting—relevant.

The court below says that the original bill is simply to foreclose a mortgage, and therefore the cross-bill is not germane. But this was the *object* only of the bill. The cross-bill was germane to the *subject-matter* of the original bill, which is the execution of the mortgage and bonds for the purchase-money of the milling plants, the validity of the same, the indebtedness of the company to each holder of the bonds, and the non-payment and the resulting right of foreclosure. The cross-bill sets up an equitable set-off against each holder of the bond, and asks for an accounting. The case of the *Investment Corp. v. Marquan*, 62 Fed. 960, cited by the court below, does not apply, because in that case the alleged cross-bill was filed for defense merely, and in no sense asked for either discovery or affirmative relief, and in fact was not a cross-bill, and, not being such, was dismissed. But on the question of whether the cross-bill was germane or not to the original bill, we submit that it could not be dismissed. On that point it could only be struck down by a demurrer, or fail on the hearing.

Admitting, *arguendo*, that the circuit court could dismiss the cross-bill, without demurrer filed, or allowing it to go to a hearing, and after issues closed, on the sole ground that its contents are not germane to the subject-matter of the original bill, we submit that in this cause the subject-matter of the cross-bill is "closely allied, appropriate, fitting and relevant" to the subject-matter of the original bill.

The original bill sets out the execution of the bonds and trust deed, their validity, the indebtedness of the company to the bondholders, that the same is due and unpaid.

The cross-bill sets out that, in and by the same transaction which the indebtedness of the company on the bonds was created, the indebtedness of each bondholder on his stock subscription was created; that if the indebtedness of the company on the bonds is valid, the indebtedness of each bondholder on his stock subscription is valid; that if the indebtedness on the bonds is due and unpaid, so is the indebtedness on the stock subscription; that your petitioners, the cross-complainants, became stockholders at the same time with the bondholders, and by virtue of the same mutual agreement to organize the company; that they had no knowledge of, nor have they ratified or acquiesced in the action of the bondholders in taking their \$2,113,000 of stock without any payment therefor. The cross-bill asks for an accounting as to each bondholder, who is the real party in interest, although represented by the mortgage trustees, and that the *company* shall have the affirmative relief of a decree against each bondholder for such amount as shall be found due over and above the amount due on each bond. The debts are shown to be mutual, and to grow out of the same transaction. It is a pure specimen of equitable set-off, which should be allowed.

That your petitioners can obtain such relief in this foreclosure suit seems clear, under

Equity Rule 94.

Bayless v. Ry. Co., 8 Bissell 193.

Thomas v. R. R. Co., 101 U. S. 71.

Thomas, Trustee, v. Ry. Co., 109 U. S. 552.

Morawetz on Corp., section 306. Citing authorities.

Set-off is enforceable in equity where there are mutual debits and mutual credits, or where there exists some equitable consideration or agreement between the parties which would render it unjust not to allow set-off.

Gray v. Rollo, 18 Wall. 629.

Wanzer v. Truly, 17 How. 584.

The case of *Patterson v. Linde*, 106 U. S. 519, arose where stockholders of a corporation organized under a statute of Oregon had not paid their subscriptions in full.

The statute of Oregon is almost identical with the statute of New Jersey, under which the defendant company was incorporated. In that case, on page 521, this Court says, after holding that the suit should be in equity by the corporation against all the stockholders for the benefit of all the creditors:

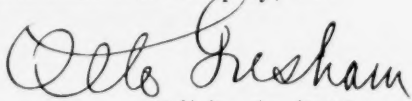
"The liability of the stockholder to the creditor is
 "through the corporation, not direct. There is no
 "privity of contract between them, and the creditor
 "has not been given, either by the constitution or the
 "statute, any new remedy for the enforcement of his
 "rights. The stockholder is liable to the extent that
 "the subscription represented by his stock requires him
 "to contribute to the corporate funds, and when sued
 "for the money he owes, it must be in a way to put
 "what he pays, directly or indirectly, into the treasury
 "of the corporation for distribution according to law."

Beard, Untermeyer, and others, bondholders, through respondents, call on the company in this suit for the debt represented by the mortgage, and in lieu thereof, ask for a foreclosure. The company can, in a suit in equity, call on Beard, Untermeyer and others for their debt on the stock subscriptions. The debts and credits

are therefore mutual, and instead of the company bringing an independent suit against the stockholders, there should be set-off in this suit.

Wherefore your petitioners respectfully pray that a writ of *certiorari* may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding that Court to certify and send to this court, on a day certain, to be therein designated, a full, true and complete transcript of the record, and of all proceedings of the said Circuit Court of Appeals in the said cause therein, entitled Harry W. Dickerman, Trustee, et al. v. The Northern Trust Company, and Ovid B. Jameson, Trustees, and Columbia Straw Paper Company, No. 344, to the end that said cause may be reviewed and determined by this court, as provided in section 6 of the act of congress, entitled "An act to establish circuit courts of appeals, and to define and to regulate, in certain cases, the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, and that your petitioners may have such other or further relief or remedy in the premises as to this court may seem appropriate and in conformity with the said act, and that the said judgment of the said Circuit Court of Appeals in the said case, and every part thereof, may be reversed by this Honorable Court.

And your petitioners will ever pray, etc.


Solicitor for Petitioners.

IN THE
SUPREME COURT OF THE UNITED STATES,

October Term, A. D. 1897.

*Messrs. Dupee, Judah, Willard & Wolf, Solicitors for
the Northern Trust Company and Ovid B. Jameson,
Trustees:*

In the suit mentioned in the annexed and foregoing
petition you will take notice that on Monday, the
29th day of November, 1897, at the opening of
Court, or as soon thereafter as counsel can be heard,
the petition, of which the foregoing is a copy, will be
submitted to the Supreme Court of the United States
for its decision thereon.

OTTO GRESHAM,

Solicitor for Harry W. Dickerman et al., Petitioners.

Service of a copy of the foregoing notice and of the
petition for a writ of *certiorari* annexed thereto, is here-
by acknowledged this 6th day of November,
1897. Said 29th day of November, 1897, for
its submission to the Supreme Court is agreeable to us.

*Charles A. Dupee
Monroe S. Willard*

*Solicitors for the Northern Trust Company and
Ovid B. Jameson, Trustees.*

No. 196.

Brief of Gresham for Petitioners



Filed Nov. 22, 1897.
Supreme Court of the United States.

OCTOBER TERM, A. D. 1897.

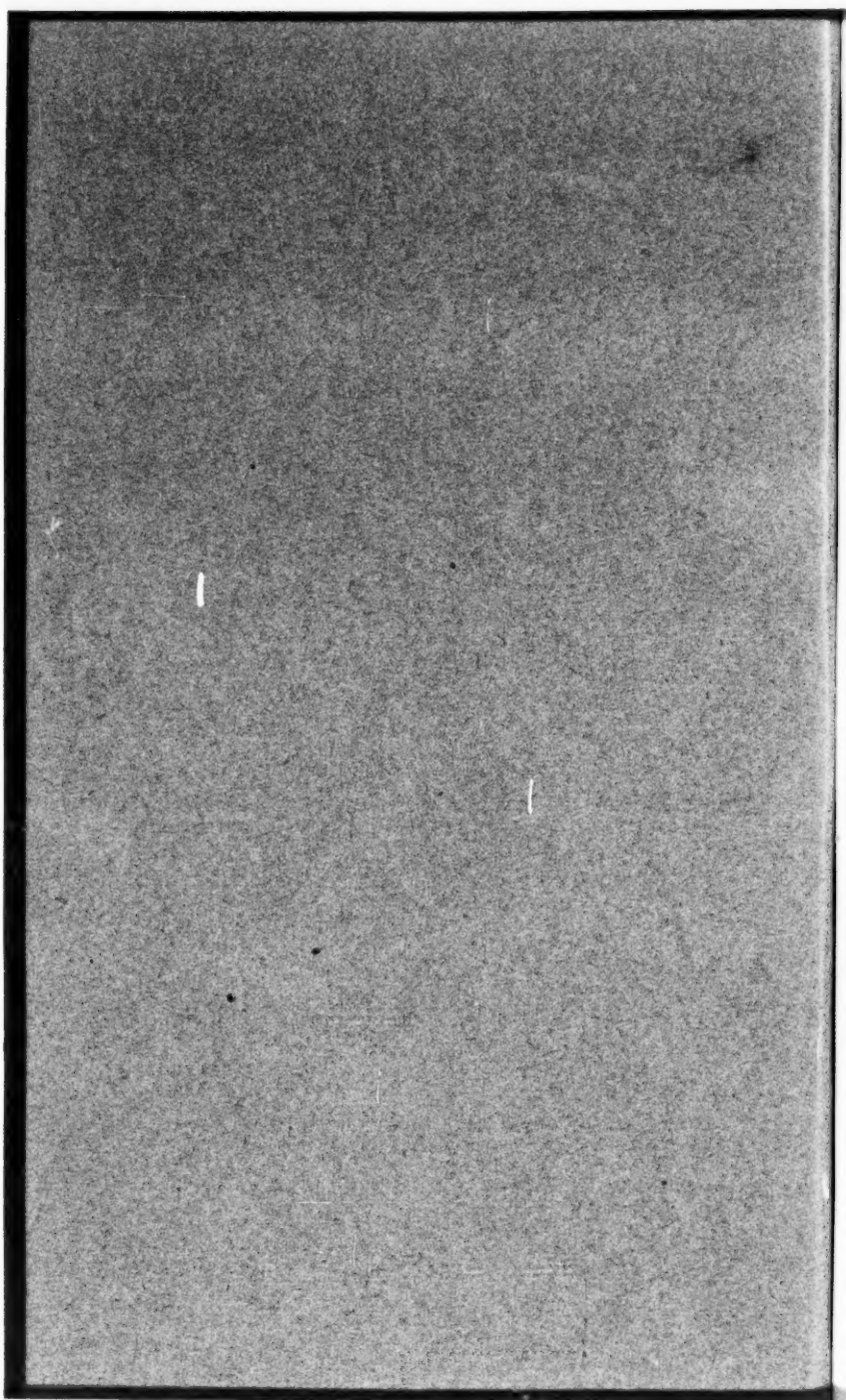
HARRY W. DICKERMAN, TRUSTEE, ET AL.,
Petitioners,

v.

THE NORTHERN TRUST COMPANY AND OVID B. JAMESON,
TRUSTEES, AND COLUMBIA STRAW PAPER COMPANY,
Respondents.

Petition of Harry W. Dickerman, Trustee for the Second National Bank of Rockford, Illinois, Fred J. Diem, E. P. Hooker, Trustee for Merchants' National Bank of Defiance, Ohio, and in his own behalf and James C. Richardson, for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

OTTO GRESHAM,
Solicitor and of Counsel for Petitioners.



IN THE
Supreme Court of the United States.

OCTOBER TERM, A. D. 1897.

HARRY W. DICKERMAN, TRUSTEE, ET AL.,
Petitioners.

Petition for Writ of Certiorari requiring the Circuit Court of Appeals of the Seventh Circuit to certify to the Supreme Court for its review and determination a case of Harry W. Dickerman *et al.*, Petitioners, *v.* The Northern Trust Company and Ovid B. Jameson, Trustees, and Columbia Straw Paper Company, Respondents.

To the Honorable, the Supreme Court of the United States:

Your petitioners, Harry W. Dickerman, Trustee for the Second National Bank of Rockford, Illinois, Fred J. Diem, E. P. Hooker, Trustee for Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, respectfully show to this honorable court:

That the questions involved in the above cause are

questions of gravity and importance and for that reason the power of this honorable court can be properly invoked to require said cause to be certified. (*Ex parte Lau Ow Bew, Petitioner*, 141 U. S. 583.)

In this case, a decree for the foreclosure of a mortgage for \$1,000,000 principal and \$165,049 interest, and for the sale of the mortgaged premises, was entered by the Circuit Court and affirmed by the Circuit Court of Appeals, without any of the bonds representing such mortgage-debt, or any of the interest warrants representing such interest, having been produced before the Master or Court, or their absence accounted for, and without any stipulation or admission being contained in the mortgage or bonds or pleadings which would render such evidence unnecessary.

At a time when none of the bonds were due, either by their own terms or by the provisions of the mortgage, the trustees declared all of them due on the sole ground that a judgment before a justice of the peace for less than \$200 had been taken against the mortgagor-corporation, and an execution immediately issued thereon, although the judgment was entered by arrangement between the officers of the mortgagor-corporation and the representatives of the trustees and bondholders, and although judgment was entered and execution sworn out after business hours on the very evening on which, a short time later, the whole million dollars of bonds was declared immediately due and payable.

The principal controversy arose over the defense, made by petitioners as stockholders of the mortgagor-company (allowed by the court to come in and defend against the foreclosure), wherein it was claimed by

petitioners that they and defendant company had been wronged by the bondholders, in this, that the former, as owners of various paper-mills, having sold the same and received part of the purchase-price in capital stock of a new corporation, organized by the bondholders, the latter had issued to themselves several million dollars of like capital stock of the new corporation, without paying any consideration therefor; and that it was inequitable for such bondholders, through the medium of a court of equity, to be allowed to sequester all the property of such new corporation for themselves, when they were indebted to that same corporation for unpaid stock, in an amount greater than the amount of their bonds.

It was for the evident purpose of escaping this inquiry that the bondholders and their trustees declined to produce the bonds in evidence.

The evidence in the case, even to the contents of the foreclosed mortgage, discloses without question that the new corporation was organized for the purpose of acquiring and owning all the straw-paper-mills in the Upper Mississippi Valley, embracing nine states, and that thirty-nine mills were acquired by it for the purpose of forming a monopoly in the manufacture and sale of straw paper throughout the United States, as the above region comprised about all the territory in the country in which such commodity was being manufactured.

Other minor grievances are complained of by petitioners, which arose during the progress of the cause in the Circuit Court, and which prevented petitioners from securing the aid of the court in raising issues and introducing evidence thereon. Amongst those was the action of the court in dismissing petition-

ers' cross bill on a mere motion, after the defendants had answered and replications had been filed.

It is submitted, that the statement of facts on page 13, *post*, supported by the record, will conclusively demonstrate that the above is a fair and indisputable statement of the controversies involved, and of the manner in which—as extraordinary as it may appear—the lower courts disposed of the same.

I.

The suit was brought in equity to foreclose a mortgage for one million dollars by the trustees named in the mortgage, The Northern Trust Company and Ovid B. Jameson. The mortgagor corporation, Columbia Straw Paper Company, was sole defendant.

Petitioners, as stockholders of defendant, were allowed to defend against the foreclosure because the mortgagee-bondholders were in control of the corporation, and were not making proper defense. Petitioners, in their answer, while admitting that the bonds secured by the mortgage had been, in fact, executed by the mortgagor-corporation, yet they expressly denied that such bonds were duly issued, negotiated and sold, or were outstanding and valid obligations of the defendant corporation.

The cause was referred to the Master, before whom none of the bonds (1,000 in number), nor any of the interest coupons, were produced in evidence, nor their absence accounted for.

Yet that officer found and reported to the court that all the bonds were negotiated and sold, and were outstanding and valid obligations of defendant corporation, and that they were secured by the mortgage sought to be foreclosed. He further found and re-

ported that there was interest due on the bonds, and unpaid (whether evidenced by interest coupons or not, he did not report), to the amount of \$249,632.86.

For such principal and interest (\$1,249,632.86), he recommended the foreclosure of the mortgage and sale of the mortgaged premises.

The circuit court overruled the exceptions of petitioners taken to the report of the Master in finding and reporting as above, and held, that the production of the bonds and interest coupons, in evidence, was not necessary until after the sale of the mortgaged premises, when the distribution of the proceeds of sale was about to be made.

That view was also taken by the Circuit Court of Appeals, which held (on the theory *ab inconvenienti*), that it would be impracticable to require all the evidence of mortgage-indebtedness to be presented in cases like the one at bar, before entering the decree of foreclosure and sale. (80 Fed. Rep. 450.) On page 455 the court say: *Transcript 50*

"In these cases where bonds issued by railroads or other large corporations on a large scale, and held in trust by trustees, but really owned by persons in many parts of the civilized world, it has not been the practice, nor would it be practicable to require the bonds to be produced before the court or Master before a decree *nisi* is entered. The practice has uniformly been to enter a decree of sale without the production of the bonds. Of course they can not be paid or share in the proceeds of sale until brought into court for payment and cancellation. In many cases years elapse after a decree is entered before all the bonds are brought in, the money lying in the registry of the court awaiting their presentation for payment, and in some cases all the bonds are never produced or paid. If the rule required all the bonds to be produced be-

fore the court or Master before a decree for sale could be made, it would in many cases be a practical denial of justice. No such practice has ever obtained to our knowledge. The sale is made for the benefit of all properly concerned. The decree is not final as to the persons or debts entitled to share in the proceeds. When the time for distribution arrives any creditor may challenge the title of the claimant of any bond presented."

It was urged upon both lower courts, on behalf of petitioners, that, admitting there was evidence before the Master which *prima facie* made a case of a mortgage duly executed, and sufficient mortgage indebtedness outstanding, and other facts to justify a decree of *foreclosure*, yet there ought not to be a *final decree* of sale until the cause should be again referred to the Master to ascertain and report the amount of the bonds and coupons outstanding. That in order to make such finding, the Master must have before him competent, legal evidence of such mortgage indebtedness, viz., the bonds and interest warrants, with the evidence of their respective owners or holders, as to the circumstances under which they came into their ownership or custody.

Petitioners insisted upon such proof, not to delay mortgagees or to throw legal obstacles in their way, but for the purpose of showing upon such examination that the owners and holders of the bonds and interest warrants had come by the same as part of the wrongful scheme to defraud the mortgagor-corporation and petitioners and other honest stockholders.

Their counsel before both courts, as well as before the Master, cited numerous cases where it had been held that, before a decree of foreclosure *and sale* could be ordered (*i. e.*, a final decree), it was indispensable that proof should be made of the amount of the mort-

gage-debt, even (in some cases) where a default had been taken against the mortgagor.

Their contention was there, as here, that it was not a question of what would be the more *convenient* practice, but of *substantive legal requirement*: that the mortgagor had a legal right, before its property should be sold to satisfy its mortgage indebtedness, to have that indebtedness judicially ascertained by legal proof.

Both the Circuit Court and the Circuit Court of Appeals seemed to regard the decree which was entered as a decree *nisi*, and that the *final decree* would not come until the property should be sold, its proceeds paid in and be ready for distribution amongst the mortgagee-bondholders, when the court should come to finally direct the disposition of the proceeds of sale.

But it was submitted for petitioners that this very decree was final as to the mortgagor-corporation; that before its property should be sold, the amount of its indebtedness, under the mortgage, should be ascertained by legal methods; so that if it should elect, it might pay the very amount thereof and prevent a sale; or, if a sale should be made, the amount necessary to be produced on such sale should be judicially ascertained. Because, from such sale, the defendant corporation could redeem in twelve months, by paying the amount of the sale with interest; and, for any deficiency, the defendant company would be liable to a judgment.

Counsel for petitioners urged upon the lower courts, as well as upon the Master, that for the Circuit Court to order a sale of the mortgage premises, before requiring legal evidence of the mortgage debt, with the purpose, as announced in the opinion of the learned Circuit Court of Appeals, of afterward requiring such evidence when the proceeds of the mortgage sale should be ready for distribution amongst the bondholders,

would be to postpone an indispensable legal requirement in disposing of the controversy between mortgagees and mortgagor until it would be *too late* to afford the latter any redress, in case the Master and the Circuit Court had *estimated* the mortgage debt at too great a sum; that in the foreclosure of a mortgage in equity, in addition to a judicial finding that the mortgage is a valid lien, it is also essential that the amount of the mortgage debt be ascertained; and that this must be done by legal evidence. In this case the mortgagor-corporation was decreed to be indebted for the full amount of the mortgage-debt, and to pay the same in ten days; in default of which the entire mortgaged premises were directed to be sold by the Master. Such a decree is certainly a final one, so far as the mortgagor is concerned. Whatever may be the result of any subsequent controversy between the bondholders over the distribution of the proceeds of sale can not concern the mortgagor, because it will not be a party to such controversy. Its indebtedness has been fixed; its property will have been sold to pay that indebtedness; and if, in the subsequent distribution of the proceeds of sale, it shall be found that the indebtedness was fixed at too great an amount, that discovery will come at too late a stage in the proceedings to give the mortgagor any relief.

That the above propositions are supported by the decisions, we refer the court to the following cases :

Dowden v. Wilson, 71 Ill. 485, 487-488.

Moore v. Titman, 35 Ill. 310.

Lucas v. Harris, 20 Ill. 166.

George, Admr., v. Ludlow, 66 Mich. 176.

Biers v. Hawley, 3 Conn. 110.

Field v. Anderson, 55 Ark. 546.

Schumpert v. Dillard, 55 Miss. 348, 363.

2 Jones on Mort., § 1469.

Shellaber v. Robinson, 97 U. S. 68. (Trust deed in equity is a mortgage.)

The learned Circuit Court of Appeals, it is submitted, was in error regarding the cases of *Guarantee Trust Co. v. Green Cove Springs and M. R. Co.* (139 U. S. 150) and *Toler v. Railway Co.* (67 Fed. 168).

In the former case this Court held that there was sufficient evidence before the court below to enable the plaintiff to maintain its bill, and that therefore it was error for that court to have dismissed the bill. This Court said: "Should the court proceed to a decree for foreclosure and sale, the holders of the bonds can be notified to appear and file them before the Master, and all questions connected with their amount and ownership can be settled upon a final hearing."

In the case of *Toler v. Railway Co.*, *supra*, the distinction between a decree for foreclosure (in the nature of an interlocutory decree) and a decree for a foreclosure and sale (a final decree) is clearly pointed out. The court say (p. 181): "Should a decree of sale be made absolute, the holders of bonds can then be required to produce their bonds and coupons before a master, and all questions connected with the amount due each, and of ownership, can then be determined." * * * "The decree for a foreclosure only establishes that there has been a default in the payment of the last three installments of interest." And the court thereupon directs a decree *nisi* to be drawn.

That the decree entered in this cause was, a final hearing of this cause, consummated by a final decree, see:

Forgay v. Conrad, 6 How. 201.

Railway Co. v. Swazey, 23 Wall. 405.

Grant v. Insurance Co., 106 U. S. 429.

R. R. Co. v. Souther, 2 Wall. 440.

Blossom v. R. R. Co., 1 Wall. 655.

Hinckley v. R. R. Co., 94 U. S. 467.

Ray v. Law, 3 Cranch 179.

Bronson v. R. R. Co., 2 Black 524.

R. R. Co. v. Fosdick, 106 U. S. 47.

First National Bank v. Shedd, 121 U. S. 74.

Bostwick v. Brinkirhoff, 106 U. S. 3.

It is therefore respectfully submitted that this is the only case to be found in the books, of a decree for the foreclosure and sale of mortgaged premises being allowed to stand, where no evidence was introduced of the amount of the mortgage-debt by the production of the instruments representing the same, or their absence being accounted for, and where there was no waiver by the contract of the parties or by their stipulations in the pleadings.

II.

The respondents, in their bill of complaint, alleged that, "on or about the 22d of January, 1895, an execution was duly sued out against the chattels and property of said defendant Columbia Straw Paper Company, upon a judgment obtained against said company, by James Flanagan, before George W. Underwood, justice of the peace, Cook county, Illinois, and the said defendant Columbia Straw Paper Company has failed to remove, discharge or pay such execution, although duly requested so to do." (Rec., p. 18.)

The transcript of the record of above mentioned judgment, introduced in evidence by respondents, shows

the suit commenced on January 22, 1895; summons issued returnable January 28, 1895; served upon the president of the defendant company at 5 o'clock P. M. of that day; the appearance of such president before the justice, and consent to go to immediate trial, and judgment for \$180 and costs of suit, and immediate execution sworn out. (Rec., 275, 276.)

The execution came into the hands of the constable on the same day, at 5:24 o'clock P. M., and two months after was returned by that officer, "*nulla bona*"—without any levy being made, or any demand on the defendant in the execution for payment. (Rec., 277.)

Later on the same day, January 22, 1895, the following instrument was executed by respondents:

"CHICAGO, January 22, 1895.

"*To Columbia Straw Paper Company:*

"A judgment having been entered against you in
 "the court of George W. Underwood, justice of the
 "peace for Cook county, Illinois, on the 22d day of
 "January, 1895, in favor of James Flanagan, and
 "execution upon said judgment having been sued out
 "against your property, and you having failed to forth-
 "with remove, discharge or pay said execution, the
 "undersigned as trustee under the trust deed executed
 "by you to them under date of December 31, 1892, do
 "hereby declare the principal and all interest owing
 "upon the one thousand bonds named and described
 "in said trust deed to be immediately payable.

"(Signed)

"THE NORTHERN TRUST COMPANY.

"By BYRON L. SMITH, its *President*.

"Attest:

"ARTHUR HURTLY, *Secretary*.

"OVID B. JAMESON."

} *Trustees.*

(Rec., p. 271.)

There was no evidence introduced that the above declaration was ever delivered to, or came to the

knowledge of, any of the officers or agents of the mortgagor-corporation.

On the evening of the same 22d day of January, 1895, respondents took possession of the property, including a large number of the paper mills of defendant mortgagor-corporation. (Rec., pp. 288 and 289.)

Two days later, on the 24th of January, 1895, respondents filed their printed bill of foreclosure in which they relied upon the above judgment, execution and declaration to foreshorten and make immediately due the whole \$1,000,000 of bonds. (Rec., pp. 1, 18.)

In short, the record discloses that on account of an execution being issued by a justice of the peace for less than \$200 after the close of business hours, the respondents, later in the same evening, declared due a mortgage indebtedness of \$1,000,000, none of which was due, and a large part of which could not become due for many years, and that, standing upon such action, respondents, two days later, filed their bill to foreclose that mortgage, and have actually obtained their decree for a sale of the mortgaged property to pay the entire amount of the mortgage debt.

That such hot haste, under such peculiar circumstances, is not favored by the courts. See:

Union Mut. L. Ins. Co. v. Union Mills Plaster Co., 37 Fed. 289.

Inman v. West. Fire Ins. Co., 12 Wend. 452.

Bennett v. Lycoming, etc., Ins. Co., 67 N. Y. 274, 276-277.

Noyes v. Clark, 7 Paige 170.

III.

The answer of your petitioners set up, as an equitable set-off to the amount that might be found due from

the mortgagor corporation to each bondholder on account of his bonds and coupons, an indebtedness owing by said bondholder to said mortgagor corporation on his subscription to the capital stock of the corporation *as an original subscriber*.

The facts alleged in the answer showed that the issue of the bonds and of all the capital stock of the corporation to your petitioners and others, in payment for the paper mill plants and to the bondholders, was one and the same transaction. That at the time the bonds were issued and paid for, the stock was issued to these petitioners who paid full value for it. That at the time of issuing the bonds, the company, by its board of directors, who were in the complete power of the bondholders, issued \$2,113,000 of the capital stock to these bondholders, who took and now hold the same, all without any consideration therefor and without the knowledge, acquiescence or ratification of these petitioners, and other stockholders paying full value, and that the issue of such stock had been kept a secret from them.

The following is a correct statement of the facts in the case.

STATEMENT OF THE CASE.

1. This was a suit brought January 24, 1895, in the Circuit Court of the United States for the Northern District of Illinois, to foreclose a trust deed dated December 31, 1892, securing an issue of 1,000 bonds of \$1,000 each, aggregating \$1,000,000. This trust deed was made to The Northern Trust Company and Ovid B. Jameson, Trustees, by the Columbia Straw Paper Company, a corporation incorporated under the laws of New Jersey. A receiver was appointed under this bill,

and ancillary proceedings were immediately begun in the United States Circuit Courts for the Southern District of Illinois, the Western District of Missouri, the Southern District of Wisconsin, the District of Michigan, the District of Indiana, the Southern District of Ohio, the Northern District of Ohio, the Southern District of Iowa and the District of Nebraska.

2. The petitioners are stockholders of the Columbia Straw Paper Company, and as such were permitted to become parties to the suit (Rec., p. 91) May 13, 1895, on showing that the Columbia Straw Paper Company was making no defense to the suit.

3. In 1890 a syndicate was organized for the purpose of acquiring all the straw paper mills in the United States, at that time seventy in number, the object being to form what is in commercial language termed "a trust." The panic of that year caused the scheme to be abandoned, and the options which had been secured on the mills lapsed. (Rec., p. 413.)

4. In 1892 this claim was revived headed by one Philo D. Beard, who became the president of the Columbia Straw Paper Company on its organization, and Samuel Untermyer of the law firm of Guggenheimer, Untermyer & Marshall, whose business was that of promoting enterprises involving large aggregations of capital. (Rec., p. 417.) After the organization of the mortgagor company the firm of Guggenheimer, Untermyer & Marshall became its general counsel in the city of New York, and they employed the firm of Dupee, Judah, Willard & Wolf to aid them in acquiring the mills referred to.

5. In order to get the mill owners into the combination, a form of option was prepared by Samuel Untermyer providing that a corporation was to be organized under the laws of New Jersey, with a capital of \$4,000,-

000, divided into \$1,000,000 of preferred stock and \$3,000,000 of common stock ; it also provided that the corporation might, if found necessary, issue bonds to the amount of \$1,000,000. The options ran to Philo D. Beard and Thomas T. Ransdell, of Buffalo, New York, and provided that they should provide all the means necessary to finance the corporation to be organized. (Rec., p. 607.)

6. Options were secured on thirty-nine of the seventy mills, with their good-will, for \$2,788,000, payable as follows: \$766,000 in cash, \$629,000 in preferred stock, \$1,258,000 in common stock, and \$135,000 in notes of the corporation to be organized.

7. October 14, 1892, Thomas T. Ransdell assigned his interest in the options, without any consideration, to Emanuel Stein, and afterwards Beard, without any consideration, assigned his interest in the option also to Stein (Rec., p. 372), and Stein, under the instructions of Beard and Untermeyer, accepted the options. On December 6, 1892, the Columbia Straw Paper Company was organized under the laws of New Jersey, with a capital stock of \$3,000,000 of common stock and \$1,000,000 of preferred stock, with authority to issue bonds amounting to \$1,000,000.

8. Immediately following the organization and prior to December 14, 1892, the incorporators elected as a board of directors the following persons: Philo D. Beard, William C. Heppenheimer, William C. Taylor, Maurice Untermeyer, Moses Weimann, J. C. Guggenheimer, T. L. Herman, Harry C. Manheim, Samuel H. Guggenheimer (Rec., p. 192). Of these Maurice Untermeyer and Moses Weimann were members of the firm of Guggenheimer & Untermeyer; William C. Taylor, J. C. Guggenheimer, T. L. Herman, Harry C. Manheim and Samuel H. Guggenheimer were clerks in the office

of Guggenheimer & Untermeyer; William C. Heppenheim was a lawyer residing at Jersey City, in the state of New Jersey, as it was necessary under the laws of that state that there be at least *one* resident director.

9. On the 14th day of December, 1892, Emanuel Stein, who held the options for the benefit of the promoters, and who, to use his own language, "was the conduit" through whom they acted (Rec., p. 398), at their instance (Rec., p. 376), made a proposition in writing to the Columbia Straw Paper Company (Rec., p. 485) to transfer to it the thirty-nine mills, and received in payment therefor its entire capital stock, less a few shares issued to the incorporators, and the entire authorized issue of bonds of the defendant corporation. This proposition was drafted by Samuel Untermeyer (Rec., p. 376), a copy will be found in the record at page 485. This proposition was accepted by the defendant company on the following day and was then embodied in the form of a contract between the corporation and Stein.

10. It was represented to the mill owners when they gave their options on their mills that the entire seventy mills were to be taken into the combination and pass into the hands of the corporation, as on the basis proposed in 1890 seventy mills would have required and absorbed the stock of the corporation of \$4,000,000 (Rec., p. 418). An examination of the amounts named in the options show that the thirty-nine mills were to be acquired for and were actually acquired for \$766,000 in cash, \$1,887,000 payable in stock, leaving a surplus of \$2,113,000 of stock.

11. Stein testifies, and he is nowhere contradicted, that prior to the transfer of the mills pursuant to the options, the promoters, Beard & Untermeyer, agreed that this \$2,113,000 of stock should be issued and di-

vided amongst themselves (Rec., p. 393); that they would put up \$1,000,000 on the bonds of the corporation and make the cash payment to the mill owners according to the options (Rec., p. 392). Samuel Untermyer collected the money from the parties who subscribed to the bonds and who held the same at the time this suit was instituted, and placed the same in his name in The Northern Trust Company in Chicago (Rec., pp. 388 and 577), in order to provide Stein with the funds necessary to meet the cash payments according to the options at the time the mill owners conveyed their property to Stein and wife, and Stein and wife conveyed to the Columbia Straw Paper Company, which were contemporaneous transactions.

12. The mill owners, including these petitioners, did not know that Untermyer, Beard and the other promoters were appropriating to this end \$2,113,000 shares of the capital stock of the defendant company without paying therefor (Rec., p. 420). This fact did not become known to these petitioners until after the suit to foreclose the mortgage was instituted.

13. In order to make the combination originally contemplated by the acquisition of the seventy mills the officers of the Columbia Straw Paper Company soon afterwards organized, under the laws of New Jersey, a corporation known as the Paper Commission Company. The function of this corporation was to handle the straw paper manufactured by all the straw paper manufacturers in the United States, which acquired the right to handle the entire product of the Columbia Straw Paper Company and of the thirty-one mills which did not become the property of the Columbia Straw Paper Company (Rec., p. 437). Instead of purchasing these thirty-one mills with the \$2,113,000 of stock as was originally contemplated, the promoters ar-

ranged through the scheme of the Paper Commission Company to control the product of these thirty-one mills and appropriate to their own use, without giving any consideration to the defendant company, this \$2,113,000 of stock.

The court below (Rec., p. 704, 80 Fed. 453) says that "The main question is, whether there is any liability "on the part of the stockholders in defendant company which can be enforced in this proceeding, or "set up as a reason for defeating the foreclosure. We "are of opinion that these contentions made by the "defendants were properly overruled. The prime difficulty was in the lack of evidence to support the "allegations of the answer. There was no evidence "of any fraudulent overvaluation, or of issuing stock "without consideration."

And the court further says (Rec., p. 705, 80 Fed. 454), "The suit is not prosecuted on behalf of creditors, "and there is therefore no question here of the liability of stockholders."

With due and becoming deference to the opinion of the Circuit Court of Appeals we submit that the record does show, clearly and without contradiction, that the bondholders, represented by Untermeyer & Wolf, first suggested the idea of consolidation of the mills in 1892 to the mill owners. The letter of Untermeyer (Rec., p. 511), the option contract (Rec., p. 604), the testimony of Stein (Rec., p. 371) and of Sherwood (Rec., p. 414) all show it. The option-contract and Sherwood's testimony (Rec., p. 415) showed that it was agreed between petitioners and the bondholders represented by Stein, that *all* the stock was to be used in buying all the seventy milling plants instead of only thirty-nine. The testimony of Stein and the

exhibits show that \$2,113,000 of stock was handed over to the bondholders as a gratuity. The option-contracts show that they were obtained for the benefit of the new company to be organized, and not for the benefit of Beard, Ransdell or Stein or the bondholders and that no more was to be paid for the mills than the option called for. Ransdell's sworn answer (Rec., p. 253) states this positively. Stein, Wolf, Beard, the bondholders and the board of directors all knew that the transfer to Stein and from Stein to the company was unnecessary and unexpected under the option contracts, and the only necessity of it was to get from the treasury of the company into the pockets of the bondholders *by form of legal contract* this surplus stock of \$2,113,000 without any consideration; whereas, under the original agreement with the petitioners it was to be used in purchase of those thirty-one mills that were not purchased as agreed with the promoting bondholders, but which were afterwards tied up in consolidation with defendant company by means of what is known as the Paper Commission Company (Rec., p. 438).

By accepting this original issue of stock, each bondholder is liable for the full amount of the same. It is not necessary that there be an express subscription.

Webster v. Upton, 91 U. S. 65.

Upton v. Tribilcock, 91 U. S. 44.

This is the rule in reference to an original issue, although it is different in the purchase of stock in the open market, on a "going concern."

The act of the board of directors, in issuing this \$2,113,000 not having been assented to, acquiesced in or ratified by the petitioners, the latter in equity, under

the averments of their answer, have the right to compel each bondholder to allow his indebtedness to be set off as against the indebtedness on his bond and coupons.

Cook on Stockholders, section 701 (3d edition).

The transaction concerning this original issue of the \$2,113,000 of the stock to the bondholders, without consideration, under an agreement made in advance of the organization of mortgagor corporation, and carried out after organization by an abuse of fiduciary relations to that company, amounts to this:

The bondholders subscribed for \$2,113,000 of original issue of stock, and instead of payment therefor, secured an agreement from the directors, *under their complete control*, that the company, for \$1,000,000 advanced on their subscriptions, would give them a mortgage on the whole plant of the company, whereby the company was to pay back to them the money they advanced on their subscriptions.

See *Morrow v. Iron and Steel Co.*, 87 Tenn. 262.

Sawyer v. Hoag, 17 Wall. 610.

The mortgagor-corporation could not give away its stock as against non-assenting stockholders, any more than as against creditors.

Cook Stockholders (3d ed.), § 41.

Morawetz on Priv. Corp., §§ 270, 286, 288.

At § 286, Mr. Morawetz tersely states the rule: "Every shareholder in a corporation is entitled to insist that every other shareholder shall contribute his ratable part of the company's capital for the common benefit." * * * "It would be a plain viola-

“tion of the equitable rights of those shareholders who
 “have contributed the amount of their shares in full,
 “to allow any persons to have the benefits of member-
 “ship, without adding the amounts of their shares to
 “the company’s capital.”

The circuit court should have refused to foreclose the mortgage for the bondholders, until they had paid the mortgagor-company the amount of their unpaid stock subscriptions.

IV.

After the taking of testimony before the Master, the respondents filed an amendment to their answer on February 9th, 1896. The amendment is in full in the Record, pp. 316 to 322. On March 4th the court refused to allow the amendment to be made (Rec., p. 325). The purpose of the amendment was to conform the pleadings to the proof, and to set up as a defense to the bill the fact that the execution of the bonds and mortgage was a part and parcel of a scheme to form an illegal combination in restraint of trade, commonly known as a trust.

The circuit court, sitting as a court of equity, as soon as the contents of the amendment was made known should have, *sua sponte*, allowed it to be filed. Courts of equity ought not to, and will not, enforce illegal contracts, but will leave the guilty parties where they find them. A good illustration is the case of *Richardson v. Buhl*, 77 Mich. 632, where the court acted voluntarily, as soon as it learned the contract under consideration was made in pursuance of the formation of a “trust.”

That the defendant-company, Columbia Straw Paper Company, was an illegal combination is shown by

(1) Letter of Untermeyer to Wolf (Rec., p. 511).

- (2) Sworn answer of Ransdell (Rec., p. 252).
- (3) Recitals in mortgage, "Exhibit A," to bill (Rec., pp. 24 and 27).
- (4) Stein's proposition to board of directors (Rec., p. 485).
- (5) Agreement between Stein and Company (Rec., p. 489).
- (6) Paper Commission Company (Rec., p. 495) formed to take in balance of mills (Rec., p. 507).
- (7) Sherwood and Stein's testimony (*passim*).

Even if the court would not admit the amendment, *sua sponte*, it ought to have done so ^{on the motion} ~~over objection of~~ complaints. *of the defending stockholders.*

C., M. & St. P. Ry. Co. v. Third National Bank of Chicago, 134 U. S. 276, pp. 288 and 289.

Starr and Curtis' Illinois Statutes, 1896, p. 1252.

Acts of Illinois, 1891, p. 206, section 5.

Acts of Illinois, 1893, p. 182, section 8.

U. S. Statutes at Large, 1890, p. —.

V.

The cross-bill was filed under leave of court granted upon a petition (Rec., p. 105) prepared according to the 94th equity rule. It asked affirmative relief, not for violation of any personal equitable rights of your petitioners (as was the case of *Forbes v. R. R. Co.*, 2 Woods 323, Fed. Cases No. 4926, cited as authority by the court below), but for and in behalf of the defendant company, mortgagor, whose board of directors was under the control of the bondholders, represented by the respondent trustees, and which company had filed an answer denying nothing in the bill.

The cross-bill was filed May 18, 1895 (Rec., p. 122), and the respondent trustees, the defendant company mortgagor, and certain of the bondholders, who were original promoters of the company, were made parties defendant. (*Braden v. Prime*, 14 Blatchf. 371, Fed. Case No. 1810.)

The respondent trustees, complainants, answered, as did almost all the defendants. (Rec., pp. 159 to 200 and 211 to 257.) Replications were filed by your petitioners to each of the answers. (Rec., p. 201 to 205 and 257 to 263), the last being filed on September 16, 1895.

January 13, 1896, the Circuit Court sustained the motion of complainants to strike the cross-bill from the files. (Rec., p. 314.)

The court below, as we understand from its opinion, bases its action in sustaining the Circuit Court in striking the cross-bills from the files on the following propositions:

- (a) That your petitioners were defendants only by the permission and order of court. (80 Fed. 456.) *Re 705*
- (b) That the matters set up in the cross-bill were substantially those set up in the answer, and, therefore, there was no need of a cross-bill. (80 Fed. 457.) *Re 705*
- (c) That the rule regarding the filing of cross-bills by permission is different from the rule in regard to filing original bills, which can not be dismissed on motion. (80 Fed. 457.) *Re 706*
- (d) That matters in cross-bill were not germane to matters in original bill. (80 Fed. 457 and 458.) *Re 707*

We first submit that, no matter under what circumstances a cross-bill is allowed to be filed in a cause, if once filed, an answer filed to it, then the cross-defendant has waived whatever right he may have had to move to strike it from the files. *A fortiori*, where replication is filed, and the cause at issue.

Payne v. Cowan, 1 Swed. & M. Chan. (Miss.)
35.

Glegg v. Leigh, 4 Madd. 191.

Betts v. Lewis, 19 How. 72.

- (a) That your petitioners were made defendants only by permission of the court, and the cross-bill was filed under leave.

The court below justifies its action in sustaining the Circuit Court in dismissing the cross-bill on the decision in *Forbes v. Railroad Co.*, 2 Woods 323, Fed. Cas. § 4926.

But there is a wide distinction between these causes. In the *Forbes* case, the defendants filing cross-bills were seeking affirmative relief on behalf of their own private interests and not on behalf of the corporation. It was their individual equitable rights, and not those of the corporation, which were claimed to be invaded. The motion to dismiss went to the action of the court in allowing them to be made parties at all. In this cause, the matters set up in the petition and alleged in the cross-bill, which was verified by oath, were set up under the provisions of Equity Rule 94. The cross-bill is "founded on a right which may properly be asserted by the corporation." The averments of the cross-bill, with reference to the refusal of the company to assert its rights, were material averments. If insufficient in equity, the question could be raised by demurrer and

not by motion to dismiss. When answers were filed, a hearing was the only method of ascertaining their truth. By peremptorily dismissing the cross-bill, as the court did, the corporation has been caused to lose all equitable rights it may have on behalf of its innocent and minority stockholders, which was being urged by this cross-bill against the bondholders represented by the trustees. As is said in *Bronson v. L. & M. R. R. Co.*, 2 Wall. 283, which was decided prior to the promulgation of Rule 94 in Equity. "It would be a reproach to the law, and especially in a court of equity, if the stockholders were remediless."

Another distinction between this cause and the Forbes case, *supra*, is that, in that case the defendants having made a *prima facie* case, they were allowed to defend. But *before* filing cross-bill, a rule was entered against them to show cause why the order permitting them to defend should not be vacated. A hearing was had, and on that hearing the court vacated the order, and expressly did so because there was much doubt whether the defendants were *bona fide* stockholders; that their contention was in behalf of their individual interests, and were *in opposition* to the interests of the company, and they admitted the truth of all the charges of gross fraud on the part of the board of directors of the company *of whom they were a part*.

In this case there is no dispute as to your petitioners being *bona fide* stockholders, nor of their asserting rights on behalf of the company, which is expressly stated to be under the control of the bondholders. Further, in this case a cross-bill has been filed. The action of the court in the Forbes case was the vacating of the order allowing the intervention for good cause shown. In this case the order allowing the intervention is not attacked, but allowed to stand, and the answer of

the intervenors is allowed to remain in and a hearing has been had and decree rendered on the same. Your petitioners are held rightly to be in court, and their answer recognized, but they are deprived of the benefit of their cross-bill on grounds which could only apply to vacating an order for good cause allowing them to intervene.

- (b) That the matters set up in the cross-bill were substantially those set up in the answer, and therefore there was no need of a cross-bill.

We submit that the court below in its decision has failed to recognize that in equity a cross-bill may serve for two very different purposes. Affirmative relief in equity is not granted on an answer. It is granted only on a cross-bill. A cross-bill may be used for defense merely, or it may be used to obtain affirmative relief. In *Lautz v. Gordon*, 28 Fed. 264, the court recognized this distinction by pointing out that, when used as a defense, it may set up a legal as well as an equitable defense, whereas when used to obtain affirmative relief, it must set up facts calling for equitable relief only. In the latter case "the cross-bill is of the nature of an original bill seeking further aid from the court."

We believe the court below to be in error in stating that the answer and cross-bill set up substantially the same facts. The cross-bill contains additional facts to those set up in the answer.

The court is also in error, in stating as applied to this cause, that upon the filing of two answers setting up the same matter, one would be struck out on motion, and that the labeling of one of them as a cross-bill would not change the rule. The sentence does not

express the true statement of facts here. It would be better expressed by saying if two pleadings are filed containing exactly the same matter, and in one of which it clearly appeared that it was filed as a defense to the bill, and in bar of the suit; and in the other it clearly appeared that it was filed for the purpose of obtaining equitable *affirmative* relief; the former would be allowed to stand as an answer, the latter, as a cross-bill.

The cross-bill in this cause set up facts, and on those facts asked for an accounting in equity between the defendant company and the bondholders, represented by the respondents, on account of transactions between them and the company at the time of, and in connection with, the execution of the bond and mortgage. Under the answer, this equitable affirmative relief could not be granted.

Under Equity Rule 90, affirmative relief must be sought by cross-bill, as in the English High Court of Chancery.

White v. Bower, 48 Fed. 187, citing

Noonan v. Lee, 2 Black 499-509;

2 Dan'l Chancery Prac. 1547;

R. R. Co. v. Bradley, 10 Wall. 299.

In *Kingsbury v. Buckner*, 134 U. S. 650, a quotation is made from *Jones v. Smith*, 14 Ill. 229: "No fitter case could be imagined for a cross-bill than the one which is presented by these pleadings. No doubt upon his answer, he (defendant) was at liberty to prove the facts averred, but this would only defeat Smith's (the plaintiff's) claim for relief; while the same facts, if established upon a cross-bill, would entitle him to have satisfaction of the judgment actually entered."

- (c) That the rule regarding the filing of cross-bills by permission is different from the rule in regard to filing original bills, which can not be dismissed on motion.

We respectfully submit to this honorable court that there is no logic or reason why the rule should be different. A cross-bill is in substance an original bill filed by the defendant in the cause to obtain affirmative relief, and also to bring before the court, completely, "the whole matter in dispute." Dan'l Chancery Pr. 1547.

If the permission is once given by the court to be made a defendant in the cause, it follows by all the rules of logic and reason, that he should be allowed, as a defendant, to assert all his equitable rights, and to obtain all his equitable remedies. On what ground can he be considered in court to file an answer, but out of court when he attempts to file a cross-bill? The case of *Forbes v. R. R. Co.*, *supra*, quoted from by the court below, does not hold any such doctrine. The court did not there enunciate the remarkable rule of practice in equity, that the court would allow the petitioner to become a defendant, recognize him as such, allow his answer to stand, and refuse to strike it out as the court below did in this case (Rec., p. 325), but dismiss the cross-bill for no other reason than that the rule is different as to original and cross-bills.

We submit that the rule is not different. That when a stranger to the original suit is once allowed to become a defendant, and files a cross-bill for affirmative equitable relief, then the rule is that his cross-bill must be tested by demurrer, or, if answered, shall go to a hearing, and that there is no more reason why a cross-bill should be dismissed than should an original bill.

- (d) That matters in cross-bill were not germane to the original bill.

Webster defines "germane" to literally mean—near akin; and as a derivative meaning—closely allied—appropriate or fitting—relevant.

The court below says that the original bill is simply to foreclose a mortgage, and therefore the cross-bill is not germane. But this was the *object* only of the bill. The cross-bill was germane to the *subject-matter* of the original bill, which is the execution of the mortgage and bonds for the purchase-money of the milling plants, the validity of the same, the indebtedness of the company to each holder of the bonds, and the non-payment and the resulting right of foreclosure. The cross-bill sets up an equitable set-off against each holder of the bond, and asks for an accounting. The case of the *Investment Corp. v. Marquan*, 62 Fed. 960, cited by the court below, does not apply, because in that case the alleged cross-bill was filed for defense merely, and in no sense asked for either discovery or affirmative relief, and in fact was not a cross-bill, and, not being such, was dismissed. But on the question of whether the cross-bill was germane or not to the original bill, we submit that it could not be dismissed. On that point it could only be struck down by a demurrer, or fail on the hearing.

Admitting, *arguendo*, that the circuit court could dismiss the cross-bill, without demurrer filed, or allowing it to go to a hearing, and after issues closed, on the sole ground that its contents are not germane to the subject-matter of the original bill, we submit that in this cause the subject-matter of the cross-bill is "closely allied, appropriate, fitting and relevant" to the subject-matter of the original bill.

The original bill sets out the execution of the bonds and trust deed, their validity, the indebtedness of the company to the bondholders, that the same is due and unpaid.

The cross-bill sets out that, in and by the same transaction which the indebtedness of the company on the bonds was created, the indebtedness of each bondholder on his stock subscription was created; that if the indebtedness of the company on the bonds is valid, the indebtedness of each bondholder on his stock subscription is valid; that if the indebtedness on the bonds is due and unpaid, so is the indebtedness on the stock subscription; that your petitioners, the cross-complainants, became stockholders at the same time with the bondholders, and by virtue of the same mutual agreement to organize the company; that they had no knowledge of, nor have they ratified or acquiesced in the action of the bondholders in taking their \$2,113,000 of stock without any payment therefor. The cross-bill asks for an accounting as to each bondholder, who is the real party in interest, although represented by the mortgage trustees, and that the *company* shall have the affirmative relief of a decree against each bondholder for such amount as shall be found due over and above the amount due on each bond. The debts are shown to be mutual, and to grow out of the same transaction. It is a pure specimen of equitable set-off, which should be allowed.

That your petitioners can obtain such relief in this foreclosure suit seems clear, under

Equity Rule 94.

Bayless v. Ry. Co., 8 Bissell 193.

Thomas v. R. R. Co., 101 U. S. 71.

Thomas, Trustee, v. Ry. Co., 109 U. S. 552.

Morawetz on Corp., section 306. Citing authorities.

Set-off is enforceable in equity where there are mutual debits and mutual credits, or where there exists some equitable consideration or agreement between the parties which would render it unjust not to allow set-off.

Gray v. Rollo, 18 Wall. 629.

Wanzer v. Truly, 17 How. 584.

The case of *Patterson v. Linde*, 106 U. S. 519, arose where stockholders of a corporation organized under a statute of Oregon had not paid their subscriptions in full.

The statute of Oregon is almost identical with the statute of New Jersey, under which the defendant company was incorporated. In that case, on page 521, this Court says, after holding that the suit should be in equity by the corporation against all the stockholders for the benefit of all the creditors:

"The liability of the stockholder to the creditor is "through the corporation, not direct. There is no "privity of contract between them, and the creditor "has not been given, either by the constitution or the "statute, any new remedy for the enforcement of his "rights. The stockholder is liable to the extent that "the subscription represented by his stock requires him "to contribute to the corporate funds, and when sued "for the money he owes, it must be in a way to put "what he pays, directly or indirectly, into the treasury "of the corporation for distribution according to law."

Beard, Untermeyer, and others, bondholders, through respondents, call on the company in this suit for the debt represented by the mortgage, and in lieu thereof, ask for a foreclosure. The company can, in a suit in equity, call on Beard, Untermeyer and others for their debt on the stock subscriptions. The debts and credits

are therefore mutual, and instead of the company bringing an independent suit against the stockholders, there should be set-off in this suit.

Wherefore your petitioners respectfully pray that a writ of *certiorari* may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding that Court to certify and send to this court, on a day certain, to be therein designated, a full, true and complete transcript of the record, and of all proceedings of the said Circuit Court of Appeals in the said cause therein, entitled Harry W. Dickerman, Trustee, et al. *v.* The Northern Trust Company, and Ovid B. Jameson, Trustees, and Columbia Straw Paper Company, No. 344, to the end that said cause may be reviewed and determined by this court, as provided in section 6 of the act of congress, entitled "An act to establish circuit courts of appeals, and to define and to regulate, in certain cases, the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, and that your petitioners may have such other or further relief or remedy in the premises as to this court may seem appropriate and in conformity with the said act, and that the said judgment of the said Circuit Court of Appeals in the said case, and every part thereof, may be reversed by this Honorable Court.

And your petitioners will ever pray, etc.

A handwritten signature in cursive script, reading "Otto Gusham". The signature is written in dark ink and is positioned above the printed name of the solicitor.

Solicitor for Petitioners.

Copy

IN THE
SUPREME COURT OF THE UNITED STATES,

October Term, A. D. 1897.

*Messrs. Dupee, Judah, Willard & Wolf, Solicitors for
the Northern Trust Company and Ovid B. Jameson,
Trustees:*

In the suit mentioned in the annexed and foregoing
petition, you will take notice that on Monday, the
...*29th*... day of *November*, 1897, at the opening of
Court, or as soon thereafter as counsel can be heard,
the petition, of which the foregoing is a copy, will be
submitted to the Supreme Court of the United States
for its decision thereon.

OTTO GRESHAM,

Solicitor for Harry W. Dickerman et al., Petitioners.

Service of a copy of the foregoing notice and of the
petition for a writ of *certiorari* annexed thereto, is here-
by acknowledged this *30th* day of *November*,
1897. Said *29th* day of *November*, 1897, for
its submission to the Supreme Court, is agreeable to us.

*Charles A. Dupee,
Morrison S. Willard*

*Solicitors for the Northern Trust Company and
Ovid B. Jameson, Trustees.*



Case No. 11,734
Term Jan 7, 1899
Supreme Court of the United States

OCTOBER TERM, A. D. 1898.

CASE NO. 11,734. TERM NO. 106.

HARRY W. DICKERMAN, TRUSTEE, ET AL.,

Petitioners,

VS.

THE NORTHERN TRUST COMPANY ET AL.,

Respondents.

On Writ of Certiorari to the United States Circuit Court
of Appeals for the Seventh Circuit.

Brief for Petitioners.

—IN THE—

Supreme Court of the United States,

OCTOBER TERM, A. D. 1898.

No. 196.

HARRY W. DICKERMAN, TRUSTEE
OF THE SECOND NATIONAL BANK
OF ROCKFORD, ILLINOIS, ET AL.,

vs.

THE NORTHERN TRUST COMPANY
and OVID B. JAMESON,

Petitioners,

Respondents.

On Writ of Certio-
rari to the United
States Circuit Court
of Appeals for the
Seventh Circuit.

Brief and Argument for Petitioners.

STATEMENT OF FACTS.

The Pleadings.

The questions here presented for review arose under a bill in equity filed by respondents as mortgagees to foreclose a mortgage in the form of a deed of trust executed to them by the Columbia Straw Paper Company, a corporation resident and citizen of the State of New Jersey. One of the respondents, The Northern Trust Company, is an Illinois corporation, the other, Ovid B. Jameson, is a citizen of Indiana.

The bill was filed in the Circuit Court for the Northern District of Illinois on January 24, 1895; and it was therein averred that different tracts of the real estate, leaseholds, water powers, etc., so mortgaged, were situated in the Northern District of Illinois. The property included in the mortgage sought to be foreclosed, was situated in thirty-two counties, in nine different States, being Illinois, Indiana, Iowa, Michigan, Wisconsin, Kansas, Nebraska, Missouri and Ohio.

The mortgage, executed in the form of a deed of trust by the Columbia Straw Paper Company to respondents as trustees, recites that it was given to secure 1,000 bonds of the paper company of \$1,000 each, and that those bonds were issued and delivered to one Emanuel Stein in part payment for the properties acquired by it from said Stein.

The bonds (alleged copies of which were made part of the bill for foreclosure) provided that they were to mature only on the happening of the following conditions:

1st. When the designated number of bonds should have been first drawn by lot for redemption by the Northern Trust Company.

2nd. When the paper company should have made default in the payment of the interest for three months, and the bearer or registered holder should give written notice to that company that he had called in the principal moneys thereby secured.

3rd. When a judgment or order should be made, or an effective resolution passed for the winding up or dissolution of the company.

4th. When the security of the mortgage should become

enforceable and was being enforced, and the Northern Trust Company should, in the exercise of any power thereby conferred, declare that the principal of the bonds should become immediately due and payable.

The above are the conditions provided for in the bonds themselves for their maturity. (Rec. p. 26.)

By the mortgage (a copy of which was made part of the bill for foreclosure) it was provided that the security thereby created should become enforceable, if after the happening of any one of the following events, the trustees should declare the principal and interest owing upon the bonds to be immediately payable:

1st. If any of the bonds should become due and payable according to the tenor thereof and default should have been made in the payment of one or more of them for one calendar month thereafter.

2nd. If default should have been made in the payment of any part of the interest on any of the bonds, or in the performance of any of the covenants or conditions in the bonds or mortgage, and such default should have been continued for three months, after written demand for payment or performance by the Northern Trust Company to the mortgagor corporation.

3rd. If the mortgagor should default in the payment of taxes, etc., on the mortgaged property, or fail to keep it insured, etc., and any such failure should continue for thirty days after demand in writing upon it.

4th. If a judgment or order should be made, or any effective resolution of the mortgagor should be passed for winding it up, "or if a distress, attachment, garnishment or

execution, be respectively sued out against any of the chattels or property of either company, and such company shall not forthwith, upon such distress, attachment, garnishment or execution being levied or sued out, remove, discharge or pay such distress, attachment, garnishment or execution." (Rec., pp. 30, 31.)

In the bill of complaint it is alleged, as the only grounds for enforcing the security of the mortgage, first that the mortgagor had made default in redeeming or discharging the several amounts of bonds designated in the mortgage and bonds for redemption, and also in the payment of certain installments of interest. But, as in the first case, no allegation was made in the bill nor facts shown in the evidence, that The Northern Trust Company had first ascertained what bonds were to be redeemed, by the drawings which it was charged with; nor in the other matter, of non-payment of interest, that the owners or holders of the bonds whose interest was in default, or The Northern Trust Company had, on the one hand, by written notice to the mortgagor, called in the principal of such bonds, or, on the other, made written demand of the mortgagor for such interest, no further consideration of such alleged defaults need be given.

The only other ground for declaring the principal of the bonds due or for enforcing their security, either mentioned in the bill or shown by the evidence, is contained in the following allegation of the bill: (Rec., p. 15.)

"VIII. Further complaining, your orators allege that on or about the twenty-second day of January, 1895, an execution was duly sued out against the chattels and property of said defendant, Columbia

Straw Paper Company, upon a judgment obtained against said defendant by James Flanagan before George W. Underwood, justice of the peace, Cook County, Illinois, and the said defendant, Columbia Straw Paper Company, has failed to remove, discharge or pay such execution, although duly requested so to do."

In the bill it is then averred "that by reason of the premises" the complainants (respondents) had declared the principal and interest on the 1,000 bonds to be immediately due and payable.

That declaration was in writing and was introduced in evidence as follows: (Rec., p. 220.)

"CHICAGO, January 22, 1895.

"To Columbia Straw Paper Company:

"A judgment having been entered against you in the court of George W. Underwood, justice of the peace for Cook County, Illinois, on the 22nd day of January, 1895, in favor of James Flanagan, and execution upon said judgment having been sued out against your property, and you having failed to forthwith remove, discharge or pay said execution, the undersigned as trustee under the trust deed executed by you to them under date of December 31, 1892, do hereby declare the principal and all interest owing upon the one thousand bonds named and described in said trust deed to be immediately payable.

"(Signed)

"THE NORTHERN TRUST COMPANY,

"By Byron L. Smith, its President.

"Attest:

"ARTHUR HUERTLY, Secretary,

"Ovid B. Jameson,

(SEAL)

} Trustees."

The above is the only evidence of the action taken by the respondents or either of them in declaring the principal of the bonds due; and there is no evidence that the writing was ever served upon, or its contents made known to, any officer, agent or attorney of the mortgagor.

The bill of complaint further states that complainants had taken possession of the plants and property of the mortgagor company under the provisions of the mortgage. Prayer is made for the foreclosure of the mortgage, for a receiver, injunction, an accounting on the bonds and coupons, ascertainment of names of lawful owners thereof, and for general relief.

On the same day on which the bill of complaint was filed, upon the consent of the defendant, a receiver was appointed for all its mortgaged property.

Later, on March 22, 1895, the mortgagor filed its answer substantially admitting all the allegations of the bill, and the claims put forth by the plaintiffs therein.

After replication had been filed to such answer but before the cause had been referred to the Master, and on May 13, 1895, petitioners, together with others, filed their petition in the cause, setting forth, *inter alia*, that they were stockholders of the defendant company, and had been injured by the wrongful and fraudulent manner in which its securities had been issued; that the defendant and its defense were under the control and direction of the bondholders and their trustees; and prayed to be made defendants and be allowed to plead, answer or demur to the bill of complaint, and to file a cross-bill.

On the same day the court entered an order that petitioners be made parties defendant to the original cause, with leave to file an answer and cross-bill. (Rec., p. 85.)

On May 18, 1895, petitioners filed their answer to the bill. In that answer petitioners, while admitting that the mortgage and bonds were executed and issued by the mortgagor company, in its corporate name, yet they denied that the holders of the bonds were entitled to the benefit of the trust alleged to have been created by the mortgage, and further denied that all of the 1,000 bonds were duly issued, negotiated and sold, or that they were outstanding and valid obligations of the mortgagor, or that all such bonds or interest coupons had come into the possession of or were held by persons who had become the owners thereof in good faith and for a valuable consideration. They further claimed that the bonds provided for usurious interest, contrary to the laws of the State of Illinois.

Petitioners thereupon set forth in great detail as to names, amounts, times and acts done, the manner in which a combination had been formed in the summer of 1892 to purchase seventy paper mills with their plants, appliances, good will and businesses, by means of securing from their respective owners option contracts, whereby each owner should agree to sell his property to the combination for a stated sum in cash, and the balance in the capital stock of a corporation to be organized, to which the seventy paper mills, with their properties, appliances, business and good will were to be conveyed.

That such corporation should have a capital stock of \$4,000,000, consisting of \$1,000,000 preferred and \$3,000,000 common stock; that the stock was to be issued at par

until the whole amount should be exhausted, and in that event the corporation was to have the power to issue \$1,000,000 of its bonds secured by mortgage upon its property; that option contracts were accordingly obtained upon the above representations to the owners of the different paper mills.

But, instead of securing such option contracts for the seventy mills, the combination secured the same for only thirty-nine mills; that the total purchase price for the thirty-nine mills, as provided in the several option-contracts, was only the sum of \$2,788,000 as follows: 766,000 in cash, \$629,000 in preferred and \$1,258,000 in common stock and \$135,000 in the promissory notes of the proposed corporation; that the combination thereupon caused the option-contracts (which had at first been taken running to two other persons) to be transferred by them to one Emanuel Stein; that the combination then arranged to divide up amongst and fraudulently appropriate to themselves \$2,113,000 of the capital stock of the proposed corporation, which would not be required to pay for the thirty-one paper mills which were left out of the combination:

That after having arranged just how many of the 1,000 mortgage bonds of the new corporation each member of the combination was to receive for an equal amount of cash, and how many shares of preferred and common stock each was to receive gratuitously with bonds, they then on December 6, 1892, caused articles of incorporation to be filed in the State of New Jersey to organize the paper company with a capital stock of \$4,000,000, with themselves and their agents in its directory; that on December 14, 1892, they procured the said Stein, who held the option contracts for

the purchase of the thirty-nine mills, to present to the stockholders (consisting wholly of the members of the combination) a proposition to secure the titles to the thirty-nine paper mills and convey the same to the new corporation for \$5,000,000 as follows: \$1,800 in cash, \$1,000,000 in the first mortgage bonds, \$1,000,000 in the preferred and \$2,998,200 in the common stock of the new company; that this proposition was accepted by the stockholders and also by the directors, the property was conveyed to the company and the bonds and capital stock were divided amongst the members of the combination as had been previously arranged, and that such persons still owned them and were still liable for their capital stock in a much larger amount than the bonds of the company; and that the latter were owned by the same persons, who were liable on their stock.

In pursuance of the order of the court granting petitioners leave to file an answer and cross-bill, on May 18th, 1895, they filed their cross-bill. In that pleading they set forth the scheme or plan by which the various persons, who were made defendants to the cross-bill, acquired their bonds and shares of stock in the mortgagor corporation, the same as had been stated in petitioners' answer. Their grievances were substantially as follows: That they were *bona fide* holders of the stock of the paper company, having acquired it as part payment for the respective paper mills and plants, which they, or their assignors, had conveyed to said Emanuel Stein under the option contracts so held by Stein; that they had no knowledge or information of the wrongful acts committed by the defendants to the cross-bill, and were not parties thereto nor participators therein; that the wrongful

acts of defendant consisted (briefly stated) in such defendants having secured option contracts from the different owners of the thirty-nine paper mills for the total purchase price of \$2,783,000, in cash, capital stock and notes of the proposed company, as stated in the answer, and having said option contracts transferred to said Emanuel Stein, who held them for the benefit of all of the defendants; that the latter thereupon agreed among themselves to organize the new proposed corporation, with a capital stock of \$4,000,000, and first mortgage bonds of \$1,000,000, all of which were to be divided up amongst defendants in proportions agreed upon, except sufficient stock to pay the mill owners the part of their respective purchase prices payable in stock. The latter would require \$1,887,000, leaving \$2,113,000 in capital stock for division amongst defendants, and \$1,000,000 in first mortgage bonds: That defendants would have to pay in cash to the mill owners, and to furnish working capital for the new company, about \$1,000,000; that amongst the defendants furnishing such money, the \$1,000,000 of first mortgage bonds and \$2,113,000 in capital stock would be divided: That the above scheme was carried out by organizing the new company, and then by having Mr. Stein secure from its stockholders and directors a contract by which he should cause to be conveyed to the new corporation the various thirty-nine paper mills, plants, businesses, and good will, and should receive in payment therefor the \$1,000,000 of bonds secured upon the properties conveyed, the \$1,000,000 of preferred stock, \$3,000,000 of common stock, except \$1,800 in amount, which had been theretofore issued to enable defendants to organize and put the new company into operation, and which was

made good to Mr. Stein by including in his purchase price a like amount of cash: That the above contract of purchase by Mr. Stein was carried out, and all the bonds and the shares of capital stock, left over after paying the mill owners, were divided up amongst the defendants, who were all the time in full control, either in person or by their agents, of the recently organized corporation: That defendants and the stockholders and directors of the new company knew that the properties so acquired from said Stein, at the purchase price paid therefor by the company, were overvalued by the sum of \$2,113,000. It is then averred that the defendants, who so received said bonds and stock, are still the owners thereof, and they were each made defendants to the cross-bill to the number of nineteen.

The cross-bill also contained an averment that the defendants had withdrawn over \$3,000,000 of bonds and stock from the company without paying therefor.

The prayer of the cross-bill, *inter alia*, was for an accounting in respect to the transactions complained of, especially in reference to the issue of the alleged mortgage bonds; that an accounting might be had on the part of the defendants in respect to the issues of the shares of preferred and common stock, and that if, on such an accounting, anything should appear to be due from any of the said defendants to the defendant, the Columbia Straw Paper Company, a decree might be entered for the payment of the same, the cross-complainants being ready and willing to pay to the defendant, the Columbia Straw Paper Company, what, if anything, might be found to be due from them; that the receiver George P. Jones theretofore appointed

might be removed and a competent and practical man appointed receiver in his stead, with the usual powers of receivers in equity, and be directed to take possession of all of the books, papers and writings of the Columbia Straw Paper Company.

Answers were filed to the cross-bill by the plaintiffs in the original bill (respondents) and by the mortgagor corporation, and by eleven of the other defendants, who were charged with being owners of the alleged bonds, and demurrers by two others, to which answers replications were filed by cross-complainants.

Whilst the proceedings under the cross-bill were thus pending before the court, the plaintiffs in the original bill (respondents) made an oral motion to strike the cross-bill from the files, which motion was unsupported by any affidavit, documentary or other evidence. And, later on, the court sustained the motion, without stating any grounds or reasons therefor. (Rec., p. 256.)

At the time the motion was made, and when it was sustained by the court, the plaintiffs [respondents] had filed their answer to the cross-bill, to which the cross-complainants had filed their replication.

The Facts.

THE ORIGINAL CAUSE HAVING BEEN REFERRED TO THE MASTER ON THE ISSUES MADE BY THE ORIGINAL BILL AND ANSWERS THERETO, (AND NOT ON THE ISSUES MADE BY THE CROSS-BILL AND ANSWERS THERETO,) TO TAKE TESTIMONY AND REPORT, EVIDENCE WAS HEARD BY HIM, PROVING, OR TENDING TO PROVE, ON THE PART OF THE RESPONDENTS, THE FOLLOWING FACTS:

James Flanagan, of New York claimed to own ten bonds, he having signed a request to the trustees to foreclose the mortgage shortly before or after January 22d, 1895. (Rec., p. 231.) There were twenty coupons for \$30 each, representing overdue interest on those bonds.

A short time before January 22d, 1895, six of those coupons were sent to Mr. Wolf, a member of the firm of attorneys in Chicago, who had been representing the paper company in the west until a few weeks prior to that time. Mr. Wolf turned over the coupons to another attorney with instructions to bring suit on them (Rec., pp. 395-484) within twenty-four hours, and on January 22d suit was brought on the coupons against the paper company before a justice of the peace in the city of Chicago, and summons was served upon Mr. Beard, the president of the paper company, at 5 o'clock P. M. of that day, such summons being returnable on January 28th. Mr. Beard, after having been served for the 28th, came before the justice and consented, on the part of his company, to an immediate trial, which was had, and judgment rendered against the defendant for \$180, the amount of the six coupons. Immediate execution was sworn out and placed in the hands of the

constable at 5 o'clock and four minutes in the afternoon of that day. The execution was afterwards returned as follows: "This execution returned. No property found; no part satisfied, this 27th day of March, 1895." (Rec., pp. 224-226.)

Later, on the same day, the trustees signed the paper writing already quoted (on page 5), declaring all the 1,000 bonds and interest thereon immediately due and payable for the default of the paper company in having failed to remove, discharge or pay the above execution.

Later, in the night of the same day and on the following day, January 23d, the trustees took possession of all the paper mills and contents included in the mortgage. (Rec., p. 235.)

On the part of plaintiffs the mortgage sought to be foreclosed having been introduced in evidence, it was proved that the 1000 bonds secured by such mortgage were in fact issued by the mortgagor and were certified by the Northern Trust Company, and by that company delivered to various persons upon the written orders of the mortgagor corporation; (Rec., pp. 280 to 294 incl.) and that 765 of the bonds in the aggregate were so delivered to some of the defendants in the cross-bill, who were therein charged with being in said combination, and a large number of the remaining bonds to the business associates of such defendants. It was also proved that shortly before the bill of complaint was filed, written requests were made upon respondents, as trustees in the mortgage, to proceed to foreclose that instrument. Those requests were signed by the holders of 366 of the bonds, of which all but 50 were owned by such defendants. Amongst

those owners was James Flanagan, whose judgment on the interest coupons is mentioned above.

Plaintiffs also introduced evidence tending to prove that the mortgagor corporation was insolvent.

None of the mortgage bonds or interest coupons were introduced in evidence; nor were any of them produced before the Master or the Court. No evidence was given that The Northern Trust Company had ever caused any of the bonds to be drawn by lot for redemption, or that any drawing had been made, as provided in the bonds and mortgage as the sole method for ascertaining the times when the bonds should respectively mature.

No evidence was offered that any written notice was ever given to the paper company by any holder or owner of bonds, that the latter had called in the principal of his bonds for the default in payment of the interest as provided in the bonds.

In short, the only evidence introduced or offered, tending to prove the happening of any of the conditions named in the bonds or mortgage for the maturity of the principal of any of the bonds, were the proceedings before the justice of the peace wherein James Flanagan obtained the judgment against the paper company.

EVIDENCE WAS ALSO HEARD BY THE MASTER, ESTABLISHING THE FOLLOWING FACTS ON THE PART OF THE PETITIONERS UNDER THEIR ANSWER;

In 1892 wrapping paper made from straw was an article of commerce and merchandise, used by grocers, butchers and bakers throughout the United States, and was manufactured under separate and distinct management by sixty-seven competing paper mills; fifty-six of which were first class and in daily operation; eleven were of small size and of little importance, while three additional were in process of construction. (Rec., p. 358.) These mills were all located in that part of the United States bounded on the east by Pittsburgh, Pennsylvania, and west by Lincoln, Nebraska, on the north by Minneapolis, Minnesota, and on the south by the Ohio River, being in the States of Ohio, Michigan, Indiana, Illinois, Wisconsin, Minnesota, Iowa, Missouri, Nebraska and Kansas. (418-419.) The mills were located in these particular States because they constituted what was known as the straw producing region of the United States, outside of which no mill could exist in competition. (R., p. 359.)

In 1890 a syndicate was organized for the purpose of acquiring the straw paper mills in the United States, at that time about seventy in number, and to convey them to a corporation. Options were secured on all these mills, of which fifty-four then could have been acquired for \$2,391,000 (R., p. 358) and the balance leased down, but, owing to the so-called Baring failure, the scheme was abandoned and the options lapsed. (R., p. 339.)

In February, 1892, this scheme was revived by one Emanuel Stein, of Chicago, who, to use his own language, became an agent or "conduit" (R., p. 318) through whom certain capitalists in New York, represented by one Samuel Untermeyer, certain other capitalists,

in Buffalo, New York, represented by one Philo D. Beard, and certain other men of means in Chicago, represented by the firm of Dupee, Judah, Willard & Wolf, acted.

Stein, in February 1892, with one E. G. Church, sought out one John B. Sherwood, because the latter had been employed by the syndicate of 1890 to secure the options. (R., p. 339.) Mr. Church stated in Stein's presence, to Sherwood, that "Mr. Stein had said "if we could get these options again, we could secure "the money down in New York to form a corporation, "which would include all of these seventy paper mill plants." (R., p. 339.)

There was a second conference between Stein, Sherwood and Church, into which one Trebein and one Halliday were called at a meeting at the Wellington hotel. (R., p. 340), where Sherwood as a result of that meeting, made up a list of his options of 1890, showing seventy mills, also showing cost of manufacturing and selling price for the past ten years, which he turned over to Mr. Stein, and the same was taken by the latter to New York. (R., pp. 340, 368, 369, 370, 384, 385, 386, 393, 394, 400.) Preliminary conferences followed, and on the 16th day of June, 1891, Philo D. Baird of Buffalo appeared in the City of Chicago with the following letter of introduction from Samuel Untermyer of New York to Henry M. Wolf of Chicago. (R., 422.)

GUGGENHEIMER & UNTERMYER,

Attorneys and Solicitors at Law,

Bank of America Building, No. 46 Wall Street,
corner of William street. Up-town office, 906 and 908
Third avenue.

New York, June 13, 1892.

HENRY M. WOLF, Esq.,

Care of DUPEE, JUDAH & WILLARD,

Adams Express building, Dearborn street,
Chicago, Ill.

MY DEAR MR. WOLF:

This will introduce to you Mr. Philo D. Beard, of Buffalo, who is about organizing a consolidation of the manufacturers of straw paper in the west, whom I commend to your favorable consideration. I have prepared certain options for Mr. Beard to be signed by the various manufacturers, and these options provide for a deposit of documents and securities by the various manufacturers. I have advised Mr. Beard to make the Trust Company in Chicago represented by your firm the depository of these papers, but I do not recollect at the moment the name of the company. Will you kindly confer with Mr. Beard on the subject and give him such assistance as is in your power.

With kind regards, believe me,

Very truly yours,

SAMUEL UNTERMYER.

The trust company above referred to is the Northern Trust Company, one of the respondents. (R., 422.)

The option referred to by Mr. Untermyer will be found on page 503 of the record.

The party of the first part is the mill owner, the parties of the second part are Philo D. Beard and Thomas T. Ramsdell. Among other recitals [stated to be the consideration for the instrument] the option contains the following:

"Whereas, it is the purpose of the parties of the second part to organize one or more corporations in such State or States of the United States, as they may be advised, with a capital of one million dollars in preferred stock, entitled to a dividend of 8 per cent per annum, and three million dollars of common stock, and with a total bonded debt, secured by mortgage or trust deed, of one million dollars." (R. 503.)

The fourth provision of the option provides for the purchase price at which the vendors will convey their mills together with good will, etc., to the corporation to be organized, agreeing to take part payment in preferred and common stock. (R. 504.)

The fifth contains a covenant that the corporation, so to be organized, shall have a capital of four million dollars, divided into one million dollars of preferred 8 per cent stock, and three million dollars of common stock, with power to issue bonds to the amount of one million dollars, the bonds to run not less than ten years. (R. 505.)

The eighth provision of the option is as follows:

"It is understood between the parties hereto that it is the purpose of the parties of the second part, their nominees or assigns, to procure options from certain persons and firms and from other corporations engaged in the manufacture of straw paper, with a view of transferring

"the options so to be obtained by them, or of accepting such options and the properties referred to therein, and subsequently transferring such properties, to the *corporation to be organized pursuant to the terms of this agreement.*" (R. 506.)

The other provisions of the option contracts are in harmony with the above section, in the proposition that the mills were to be transferred to the corporation to be organized only, and not to the parties of the second part, for a total sum equal to the aggregate amount named in the options themselves.

Beard and Ramsdell, the parties of the second part (after the options were obtained) without any consideration therefor transferred them to Stein, who thereupon notified the mill owners of his acceptance thereof.

The Master reports on page 268:

"I further find that the contention of the defendants that the stock of the company which passed into the hands of Emanuel Stein by virtue of his contract with the company was not fully paid up stock, is not supported by the testimony. But I do find and report that said stock was received by said Stein from said company in fulfillment of his contract with it as fully paid stock, and that as a matter of law any question in regard to it between stockholders of the company cannot be inquired into in this proceeding."

The 9th exception to the Master's report (522) is as follows:

"For that the Master hath in and by his said report certified that the said stock (referring to the entire issue of stock of said company) was received by said Stein from said company in fulfillment of his contract with it as fully paid up stock. Whereas, said Master should have reported that said Stein did not, as a matter of fact, receive the entire issue of the stock of said company in ful-

"fillment of his contract with said company; that \$629,000
 "of the preferred stock of said company and \$1,258,000 of
 "the common stock of said company was issued direct to
 "the owners of the mills, according to the options, whereby
 "they agreed to transfer their said mills to said Stein, or a
 "corporation to be organized by him, and the balance of
 "the stock of the defendant company, namely, 3,710
 "shares of preferred and 17,420 shares of common stock
 "were fraudulently and without consideration issued direct,
 "and not through the medium of said Stein, to the organ-
 "izers and promoters of said defendant company, and with-
 "out the knowledge and consent of these defendants who
 "took their stock in said company on the representations of
 "said Stein and the promoters and their agents, that 70
 "mills would be acquired in exchange for the stock and
 "bonds of the defendant corporation, and that the purchase
 "price of said 70 mills would absorb and take up all said
 "capital stock of four million dollars; whereas, in fact, said
 "corporation only acquired 39 mills, as appears from the
 "testimony of Emanuel Stein, John B. Sherwood and Henry
 "M. Wolf.

The Circuit Judge, in deciding the case in the Circuit
 Court, in his opinion, on pages 525-526 said:

"It is strongly urged here that the property which the
 "company got for its stock under the Stein contract was
 "not a fair equivalent for the stock, estimating the latter at
 "its par value. As the case has turned out and in the light
 "of what has happened, this position is doubtless correct;
 "but when the contract was made, and in view of the enter-
 "prise then in contemplation, I am not even prepared to say
 "that the estimate put upon the property by these parties
 "was so far out of the way. The important point, as the
 "question arises here, is this: Whatever may have been in
 "fact the value of the property turned over to the company
 "for its stock, the company agreed to take it for the stock.
 "The persons interested were the stockholders and there
 "was no dissent on the part of any person concerned from
 "what was then done."

At the time the company made this agreement, as will hereafter appear from the evidence, it was in the hands and under the control of the promoters.

And the Circuit Court of Appeals in its opinion on page 575, said:

"Assuming that the stock of the company was of par value, and that the plants were worth only the prices fixed upon them in the several options, of course there would appear to be an overvaluation in the sale. But this is an assumption that would scarcely be warranted. Probably there was not much market value for the stock especially the common and unpreferred stock. It is supposed that the new enterprise would make the plants more valuable, so that the value of any plant before the transfer would not be evidence of its value after the consolidation should be completed. Every one interested proceeded with his eyes open, and it was entirely competent to make such contract as they might agree upon. There was no compulsion practiced and no evidence of fraud."

Between July 1 and October 31, 1892, the options on the mills were being secured (R 341). It was believed by the petitioners and other mill owners that options were being secured on the entire seventy mills (R., 368-367-371-400).

On page 368 Sherwood testifies: "Mr. Stein, Mr. Church, Mr. Trebein, Mr. Halliday, and it is my impression that in my conversation with Mr. Beard and Mr. Ransdell, which I referred to in my direct examination I spoke of, the subject of the 70 mills was spoken of, in fact I feel very sure of it."

On page 370 Sherwood answered the following question put to him:

"Q. I will ask you again were any further statements

"made by these gentlemen, or either of them, to the effect
 "that all these 70 mills should be obtained by the corpora-
 "tion to be formed?"

"A. Yes, sir, all these gentlemen spoke in their con-
 "versation to me of 70 mills going in." * * * *

"They never said to me otherwise than that the 70 mills
 "were to go in, never suggested that any changes were to
 "be made, that any number of mills were to be left out,
 "but on the contrary, when we commenced taking options
 "about the first day of July, 1892, the territory was divided
 "up, Mr. Church was to take all west of the Indiana line
 "and to be assisted by Mr. Halliday and Mr. Stein if nec-
 "essary. I was to have Indiana and Michigan; Mr. Tre-
 "bein was to have Ohio and it was the understanding that
 "we should all assist one another in getting these options,
 "and as I have stated in my direct examination, I did so,
 "and the fact is I took an option on the Hartford City Mill
 "in Indiana, and Mr. Stein Mr. Church and Mr. Trebein
 "were also at that mill to change it, and I had every reason
 "to believe, and did believe, that the Hartford City Mill
 "was going in, especially as it was one of the very best mills
 "in the business, but they left that mill out. The same is
 "true of the Indiana Paper Company, of Mishawaka. I
 "took an option there for its product." (R., 370.)

On page 343 Sherwood says:

"In that talk I had with Mr. Wolf (on November 15,
 "1892) I told him about these seventy mills and told him
 "that I could not find out from Mr. Church what options he
 "had got in, or from Mr. Trebein, and he said they had got
 "in substantially all, but did not give me the number, and I

"never saw a full list of these mills that had been taken in
"until this foreclosure suit was brought and I found it in the
"bill."

There is no testimony in the record to show that petitioners knew that the entire seventy mills were not to be taken into the proposed corporation. Sherwood testified positively that they did not know that the entire seventy were not to go in, and on page 374 says:

"No, sir; and also the fact that Mr. Stein, Mr. Church, "Mr. Halliday and Mr. Trebein continually guarded me "against saying that (what) I knew to these men as to 'the "number that were going in, or anything about it, and the "fact that I believed myself seventy mills were going in "and took it for granted that nobody else had any other "information."

And on pages 369 and 370 he testified on cross-examination as follows:

"Mr. Stein took these statements, and said he would go "down and see Mr. Beard and Mr. Ramsdell, and all our "conversation was on the basis of the seventy mills, and in "addition to that I will say that at the time we finally agreed "on my receiving this \$25,000 of common stock it was based "on all the seventy mills being in, for the reason I would "never have taken it if one-half of the mills were left out, "because the organization must be unsuccessful, not "having the others to act with them."

This testimony of Sherwood's is at no place in the record contradicted. As a matter of fact, the record does not show on how many of the seventy mills options were secured, but it does

show that they were secured on more than forty. No one testified on behalf of the promoters that options were not secured on the entire seventy mills. Thirty-nine of the mills on which options were secured, according to the consideration expressed in the options themselves, could be acquired for \$2,788,000, payable in cash and bonds and notes of the corporation, as follows: \$766,000 in cash, \$629,000 in preferred stock, \$1,258,000 in common stock and \$135,000 in the notes of the company. (R., pp. 343-344.) When it was decided by the promoters to take in the thirty-nine mills, which could have been acquired, and which subsequently were acquired, for \$2,788,000, payable as aforesaid, is not developed by the testimony.

As this plan only required \$1,887,000 of stock to acquire thirty-nine mills it left a surplus of \$2,113,000 of stock.

Stein testified, and he was no where contradicted, that, in the preliminary conferences, prior to the transfer of the mills, pursuant to the options, and before the corporation to be organized was organized, the promoters agreed that *they would put up \$1,000,000 on* (R., p. 325.) *the bonds of the corporation* in order to make the cash payment to the mill owners according to the options, pay the \$200,000 into the treasury of the company as a working capital, and further agreed amongst themselves as to how the \$2,113,000 of stock should be issued and divided amongst themselves. (R., pp. 322 and 312.) This understanding he says was verbal, and that he, on the verbal statement that Mr. Untermeyer, Mr. Beard and others would put up the money necessary to make the purchases, went ahead and accepted the options. (R., p. 313.) But he also says these gentlemen understood what the mills could be

acquired for, as they examined the options. (R., p. 313.)

The Circuit Court of Appeals in its opinion on page 573, says: "In disposing of the bonds it was found necessary to give the purchaser of each \$1,000 a bonus of \$200 "in addition of the preferred stock, and \$400 in the common "stock of the company."

There is no evidence in the record tending to show that the petitioners or mill owners or even the company knew of such an arrangement. There is nothing in the options themselves to authorize it, and it is exactly contrary to what Stein says was done as between the members of the syndicate themselves. What Stein and Wolf testified to was, that the members of the syndicate, in placing some of the bonds, gave to their friends and associates \$200 of preferred and \$400 of common stock with each bond. (R., 322 and 455.) They were not fair enough even to allow their friends to share on an equal basis with themselves in the preferred and common stock.

Assuming that the Circuit Court of Appeals is correct in its above statement, quoted from page 573 of the Record, and assuming that 3,330 shares were rightfully placed in Wolf's hands as trustee on the order of Stein under a modified agreement between him and the company, hereinafter referred to, there would be absorbed as bonus with the bonds 6000 shares, and 3,330 by Wolf as trustee, aggregating 9,330 shares. Adding to this 18,870 shares necessary to pay for the mills (Rec., p. 344), will absorb 28,200 shares of the 40,000 shares, total capitalization, and leave 11,800 shares, or \$1,180,000 of stock, still unaccounted for, and against which no claim whatever can be set up by respondents; unless it is further assumed that possibly for services

in obtaining options and organizing the corporation Sherwood received \$25,000 of stock. If Trebein and Church, on this account, received the same amount, it would aggregate \$75,000. Assuming and adding \$100,000 to pay for organizing, there is still over \$1,000,000 of stock at its par value which the bondholders took without paying for in any way whatever.

To carry out the above plan of taking from the treasury of the contemplated company without formal subscription the \$2,113,000 of stock, which was not necessary to be used in acquiring the mills; while Baird was transferring the options to Stein, Samuel Untermyer drafted the articles of incorporation under the laws of the State of New Jersey, which were executed by Baird, by Henry C. Taylor, a clerk in the office of Guggenheimer & Untermyer, and William C. Heppenheimer, a New York lawyer residing in New Jersey, each subscribing for four shares, aggregating twelve shares out of the total issue of 40,000 shares. On December 6th, 1892, these articles of incorporation were filed in the office of the Secretary of State in the State of New Jersey. These incorporators immediately, as the statutes of New Jersey require, (on filing the Articles of Incorporation), met in Hoboken as stockholders and elected themselves directors with the following named persons: Maurice Untermyer, Moses Weinman, J. C. Guggenheimer, T. L. Herman, Harry C. Manheim and Samuel H. Guggenheimer, of whom Maurice Untermyer and Moses Weinman were members of the firm of Guggenheimer & Untermyer, and William C. Taylor, J. C. Guggenheimer, T. L. Herman, Harry C. Manheim and Samuel H. Gug-

guggenheimer were clerks in the office of said Guggenheimer & Untermyer. (R. 356, 311 and 451.) Not a single owner of mills expecting to become a stockholder under the accepted options was at this time placed on the board, although representations had been made by the syndicate as early as October 17, 1892. (R. 363) that the individuals had been selected for the first board of directors, a majority of whom were to be mill owners. (R., p. 357.) At this meeting Philo D. Baird was elected President, and one Samuel H. Guggenheimer was elected Secretary of the company.

On the 14th day of December, 1892, Stein, who now held all the options for the benefit of the promoters, at their instance, made a proposition in writing to the above Board of Directors of the Columbia Straw Paper Company to transfer to it the mills named in the schedule attached thereto, thirty-nine in number, and to receive in payment therefor the entire capital stock, less the 12 shares issued to the incorporators, and the entire authorized issue of bonds of the corporation. This proposition was drafted by Samuel Untermyer (R., p. 308) and is found in the Record at page 401.) The stockholders on the same day, the 14th of December, met in Hoboken, New Jersey, and passed resolutions, set out in the mortgage, (Rec., p. 20) accepting Stein's proposition and instructing themselves, as directors, to buy the thirty-nine mills offered by Stein. On the same day, they, as directors of the company, met in the office of Guggenheimer & Untermyer, in their office in Wall street, New York, and by a resolution, a copy of which is set out in the mortgage sought to be foreclosed (Rec., p. 22), accepted the proposition as authorized by themselves as stockholders, and authorized Beard, as president, to enter into a contract with Stein.

On the following day, the 15th of December, 1892, the Columbia Straw Paper Company, by Philo D. Beard, its president, signed such a contract and sent it to Chicago, where, on the 17th day of December, 1892, it was by Emanuel Stein and wife, executed before a notary public, John B. Hood, a clerk in the office of Dupee, Judah, Willard & Wolf.

The first or "dummy" board of directors composed of Beard, members of, and clerks in the firm of Guggenheimer & Untermeyer, served for two weeks, from the 14th day of December, 1892, when they were succeeded by the board composed of Philo D. Beard, Fred. C. Trebein, E. Gilbert Church, J. B. Halliday, B. M. Frees, Richard T. Higgins, Emanuel Stein, Augustus P. Brown and William C. Heppenheimer. (R. p. 357.)

From December 17th, 1892, to January 28th, 1893, Messrs. Dupee, Judah, Willard & Wolf were busy persuading the mill owners to deposit their title deeds and abstracts with the Northern Trust Company, under the terms of section 10 of the option contract, before payment had been made for the deeds. But not a word during this time was said to the mill owners and these petitioners of what transpired in New York, December, 14th and 15th, 1892.

While the above transactions were progressing in Chicago under the immediate supervision of Mr. Wolf, who represented Untermeyer and Dupee, Judah, Willard & Wolf and not Stein, (R., 305, 316, and 427), Mr. Untermeyer was busily engaged in New York in getting his friends to advance to him and place in his hands the moneys to pay for the bonds that they had agreed to take, and Beard was likewise so engaged in Buffalo. The money being obtained

Untermeyer arrived on the 25th day of January, 1893, in Chicago and deposited it, amounting, in all to over \$800,000 in his name with the Northern Trust Company and arranged with that company as to the manner in which it was to be disbursed to the mill owners, the particulars of which the record does not fully disclose, except to show that it was arranged that all the money that he or any other subscriber to the bonds so deposited in his name should be checked out by his personal agent, Henry W. Wolf, who should sign all the checks. "Samuel Untermeyer by H. M. Wolf, his attorney in fact." (R., 427). Between this 25th day of January, 1893 and the 8th day of April, 1893, Henry M. Wolf, acting for this syndicate, made settlement with all the mill owners and took over their properties (R., 429), by giving checks to them payable to Stein, who endorsed them over, endorsing as directed (R., 427.)

In no case was said Stein allowed to deposit any of these checks in bank, and give mill owners his individual check. Stein testified that he did not understand the plan of procedure, (Rec. 326 and 327) but left everything to Wolf to attend to, (Rec. 330) although it involved Stein's paying out \$1,000,000 in cash, and distributing \$4,000,000 of stock among his "nominees." Wolf's plan of settlement was as follows: He would first examine the options, (R., p. 425), find out how much money was required (R., p. 428) and then draw a check to make the cash payment and have Stein endorse the check (Rec. 319) and return same to Wolf, who would then deliver the check to the mill owner. The certificates of preferred and common stock were filled out under the directions of Wolf, (Rec. p. 429) in his office and given direct by Wolf to the mill owners. (Rec. pp. 429,

431). Stein had nothing to do with this part of the proceedings (Rec. 320) except to do as Wolf directed. Untermyer and Wolf did not seem to trust him, being determined to see to the disposition of the purchase price themselves. (Rec. p. 453). When it came to issuing the bonds, there was first a temporary bond certificate book, certifying that the holder of the certificate was entitled to bonds. The first certificate was drawn for one thousand bonds in the name of E. Stein. (Rec. pp. 432, 464) and was issued to him on the 28th day of January, 1893. (Rec. p. 465) and is in Samuel Untermyer's handwriting, (Rec. p. 466). Samuel Untermyer then, on the same day, at the same time and at the same place, Richelieu Hotel, Chicago, had Stein endorse upon the back of this temporary certificate, calling for one thousand bonds when they should be lithographed and delivered, an order to the Columbia Straw Paper Company to have the certificate split up (Rec. p. 429) and new certificates for 1,000 bonds issued (Rec. p. 464) to the several parties and in the several amounts indicated as shown by schedule formerly attached thereto.

The petitioners asked repeatedly for the production of the record transfer of stock and the stubs from which the same were issued. (Rec., 338, 365 and 366.) These the respondents refused to produce, although it appeared these books were in the custody of the secretary of the defendant company in New York or New Jersey. (Rec., 321, 366, 409.) Thereupon, the petitioners proved by John B. Sherwood that he had secured a copy of the stock register from one of the directors of the company. (R., pp. 347-377-388.) From the information so derived Sherwood testified on

pages 344 and 345 of the Record that 957 shares of preferred and 4441 shares of common stock went directly into the hands of Philo D. Baird; that 859 of preferred stock and 4357 shares of common stock went to Messrs. Guggenheimer and Untermyer; to the friends of Messrs. Guggenheimer and Untermyer, 420 shares of preferred and 841 shares of common; to Dupee, Judah, Willard & Wolf, as a firm, 172 shares of preferred stock and 515 shares of common. To Henry M. Wolf, as trustee, 1,110 shares of preferred stock and 2,232 shares of common stock; to Emanuel Stein 270 shares of preferred and 2,377 shares of common, and that not a dollar of consideration passed from Stein or these parties to the company for this stock.

On pages 347 to 356, he shows how the bonds were distributed to these same parties and their associates. This information he derived from a copy of the bond register.

It appears from the testimony of Mr. Wolf that the 1,110 shares of preferred and 2,220 shares of the common stock which were placed in his hands as trustee, were so placed by Stein under a modified contract which the company entered into with Stein, dated January 28th, 1893, whereby the Newark and Coshocton Mills were turned over to the company. The contract is found in the Record at page 495. These 3,330 shares were so placed by Stein in Wolf's hands to indemnify certain of the syndicate, who loaned certain of their bonds to the company, and also the company from the liability which it incurred by execution of certain notes in order to secure possession of certain mills, the owners of which would not transfer their mills according to the options. This was done to avoid, as the agreement itself recites, litigation to secure possession

of these mills. This contract is found in the Record at page 495.

It thus appears that it can be traced directly that the syndicate got 3,788 shares of preferred, and 14,751 shares of common stock from the treasury of the company, aggregating 18,549 shares of the par value of \$1,854,900. As it took but \$1,887,000 of the stock at par to acquire the mills, this leaves \$258,100 unaccounted for. This is explained in the testimony of Sherwood on page 344, when he says that this stock went to the friends of Dupee, Judah, Willard & Wolf. Add this \$258,100, to the \$1,854,900 above, and it amounts to \$2,113,000 which is the total capitalization of \$4,000,000, less the \$1,887,000 that went to the mill owners.

These figures corroborate Stein's statement that the surplus stock was to go to the promoters and their friends, and hence we say the amounts the promoters took without any payment therefor was 211,300 shares of stock, of the par value of \$2,113,000.

It now where appears that these defendants and cross-complainants knew anything of this modified contract (Rec., p. 495) and the distribution of the surplus stock, and, on the contrary, it was testified to by Sherwood that they knew nothing of this. Even Wolf says on page 456 he knew nothing about the distribution of the stock—that is, the surplus stock.

The Corporation Begins Business.

After commencing business, the first act of the directors was to increase the price of the products of the company from \$24 a ton to \$30 a ton (R. p. 360). This invited competition

from the mill's on which options had been obtained but not "taken over" by the company. The Hartford City, Indiana mill mentioned by Sherwood above was especially active. (R., pp. 360 and 417.) Next Samuel Untermeyer drew articles of incorporation of the Paper Commission Company, under the laws of the State of New Jersey, with a share capital of \$30,000 of common stock, divided into 600 shares of the par value of \$50 each. Twenty shares were subscribed for by the incorporators, one Marchbank of New Jersey and two law clerks in the office of Guggenheimer & Untermeyer, who had been members of the first Board of Directors of the Columbia Straw Paper Company. (R., 413.)

The sole function of this Paper Commission Company was to sell all the product of the Columbia Straw Paper Company and of those paper mills which had not been "taken over" by the Columbia Straw Paper Company as originally agreed in the options. (Rec., 415 to 418.) The syndicate composed of the original promoters, controlling the Columbia Company owned a majority of the stock of the Commission Company. And through the officers of the two companies, being the same and having the same office in the Old Colony building in the city of Chicago, full and absolute control was obtained by the Columbia Straw Paper Company of the product of *all* the paper mills in the country. The manager of the Hartford City, Indiana, mill, was one of the directors of the commission company. (R., p. 417.) On page 120 of the record it will be seen that the Columbia Straw Paper Company paid the Paper Commission Company the enormous commission of 25 per cent. of the gross selling price, for selling all its

paper, reducing the net price realized to the Columbia Straw Paper Company to a less amount than it had obtained when selling its own paper.

On the 10th day of January, 1896, after all the evidence had been taken, but before the Master had made his report, Charles A. Miller filed his petition setting out that he was a stockholder, and obtained his stock as part of the purchase price of his paper mill, sold to the syndicate mentioned above, and that the whole scheme of the promoters, as appeared from the recitals of the resolutions of the stockholders and directors set out in the mortgage, and from the evidence, was to establish a trust or unlawful combination in restraint of trade--and prayed that he might be made a party defendant to set up this defense. (Trans., p. 240.) The prayer of his petition was denied. (Trans., p. 264.)

On the 9th day of February, 1896, before the Master reported, but after the conclusion of the testimony, the petitioners asked leave to amend their answer for the purpose of showing that the scheme of the organizers of the Columbia Straw Paper Company, from the beginning, was to organize a trust or unlawful combination in restraint of trade contrary to the statutes of the State of Illinois and the Laws of the United States in such cases provided.

The court allowed the amendments tendered to be filed (Trans., p. 257), but on the 4th day of March, 1896, denied the motion to amend. (Trans., p. 264.)

It appears from the testimony that all the mills acquired had been taken over by the Columbia Straw Paper Company

by June 1, 1893, and on that day were in the full operation. The company promptly paid the semi-annual interest on the bonds, due on the first days of June and December, 1893. (R. 121 and 221.) Notwithstanding, the Court of Appeals say, in its opinion on page 573, "indeed, no portion, either of principal or "interest, has ever been paid."

From an exhibit to the verified cross-bill it appears on page 121, in a report of Beard, president, that the company expended \$114,940.31 in cash on purchases of mills, in addition to the \$5,000,000, for which Stein had agreed to transfer the mills to the company. On page 120 it is shown that the board of directors expended \$90,368.08 for permanent improvements on the mill properties, and in addition thereto, expended \$49,695 in carrying idle mill properties and (p. 119) \$45,826.83 for repairs; making a grand total of \$300,830.22 expended of the company's capital by the board of directors; with a full knowledge on the part of said board that the expending the sum that they did on Stein's debt, and permanent improvements, would prevent the board from meeting and paying the \$30,000 of interest due on the first days of June and December, 1894 each.

The board of directors were all bond holders; Guggenheimer & Untermeyer were the New York counsel, and Dupee, Judah, Willard & Wolf were the Chicago counsel at the time of the expenditure of these sums for Stein and for permanent improvements. Paragraph 7 of the cross-bill sets up the payment of the moneys for Stein. The default in the payment of the interest in June and December, 1894 was certainly unnecessary, and was perhaps intentional because, on foreclosure, the syndicate

would, by purchase through a re-organization committee, obtain the mills, valued according to the options at \$2,788,000, and according to their own figures at over 5,000,000, in a condition better by over \$90,000 permanent improvements and over \$45,000 in repairs, than when they obtained their mortgage, and probably, if they so desired, even would cut out their friends.

Final and Complete "Wrecking" of the Columbia Straw Paper Company by, and to the Financial Advantage of, the Syndicate.

A reference to the condition of the bonds and mortgage will show that non-payment of interest at maturity is not of itself a ground for foreclosure. No foreclosure under this mortgage could be had without the principal of the bonds being due. The Paper Commission Company was a success. It was necessary that a plan be devised, for the Columbia Company was quickly bleeding to death, by which the bond holders could kill it at once and get possession and title to the mills. On reorganization, the bond holders, represented by a new company, could again coalesce with the outside mills in the Paper Commission Company. Some grounds for declaring the principal of the bonds due by the complainant trustees was necessary and the condition of the mortgage (not found in the condition of the bonds) (Article 3, Section 4, page 31) heretofore set out was taken advantage of. Although a bond holder cannot sue on an interest coupon, obtain judgment and levy his execution on the mortgaged property, yet the Northern Trust Company and Ovid B. Jameson, as trustees in the trust deed (representing in law the Columbia Company, as well as the bond

holders), Guggenheimer & Untermeyer and Dupee, Judah, Willard & Wolf, planned and carried out the following scheme for declaring the principal of these bonds due, in order to bring about a foreclosure proceeding and a purchase of all the properties to themselves for the purposes above set out.

On January 24, 1895, a printed bill of complaint was filed in the Circuit Court in Chicago, which bill of complaint had been drawn in New York by Louis Marshall, of the firm of Guggenheimer, Untermeyer & Marshall, the successor of the law firm of Guggenheimer & Untermeyer, and New York counsel for the Columbia Straw Paper Company. Marshall swears positively to this fact in two several places of the record (the middle of page 562 and middle of page 566). Marshall also swears at pages 563 and 566 that he got his information about said judgment being taken, and upon which the trustees declared principal of bonds due, from Henry M. Wolf. In order for Marshall to draw the bill and get it filed by Wolf at Chicago on January 24, 1898, Wolf must have given the information by telegraph or long distance telephone, as Wolf could not have heard of the refusal of the company to forthwith pay the execution until the night of January 22, 1895. after 5:24 P. M., as he no longer was counsel for the Columbia Company, but was of the Northern Trust Company, trustee. The evidence does not show whether the bill was printed in New York or Chicago. A receiver was immediately appointed, and he entered into immediate possession of all the mills of the company in Illinois, and by ancillary proceedings, entered into immediate possession of all the mills in the several other States.

ERRORS ASSIGNED.

First and Twentieth. The Circuit Court erred in striking from the files the cross-bill of the appellants and in refusing to vacate that order. (Rec., p. 545 and 549.)

Second. The court erred in overruling the exception^s and each of them of the petitioners Harry W. Dickerman, trustee, and others, to the Master's report, and in finding that the equities of the case are with the complainants. (Rec., p. 545.)

There are thirteen exceptions to the Master's report. In the sixth to the eighteenth assignments of error inclusive, the overruling of each exception is separately assigned as an error. (Rec., p. 549.)

The *first exception* is based on the failure to produce the bonds in evidence before the Master. (Rec., p. 508.)

The *second exception* is based on the failure of the testimony to show that the entire issue of bonds were duly certified by the Northern Trust Company. (Rec., p. 509.)

The *third exception* controverts the report of the Master that the Columbia Straw Paper Company made default, in redeeming and discharging 100 bonds which, by the terms of the bonds and the mortgage, were to be redeemed and paid on said day by paying therefor \$110,000. That on the 1st day of December, 1894, it made default by failure to redeem or discharge the 105 or any part thereof as provided in the mortgage and bonds because the evidence does not show that there was any drawing of said bonds as provided by the fifth clause of conditions of the bonds themselves and because there was no demand by the Northern Trust Company three months prior to filing the bill on the Paper Company to pay said installments as provided in Art. 3, Sec. 2 of the mortgage. (Rec., p. 509.)

The *fourth exception* challenges the report of the Master that the defendant, the Columbia Straw Paper Company, failed to pay the interest on the first day of June, A. D. 1894, and the first day of December, A. D. 1894, on all of said 1000 bonds, and that said default still continues. (Rec., p. 511.)

The *fifth exception* is directed to the failure of the Master to certify that the evidence taken proved that the mortgage was executed and delivered and the 1,000 bonds secured thereby were uttered and issued by the Columbia Straw Paper Company as a material part of an unlawful scheme, for the purpose of creating a monopoly or trust. (Rec., p. 512.)

The *sixth exception* controverts the finding of the Master that the 1,000 bonds, with interest, at the date of his report were unpaid, based on the finding that the Columbia Straw Paper Company had failed to redeem or discharge certain of said bonds and had failed to pay certain moneys into the sinking fund, referred to in said mortgage, for the redemption of said bonds, because the evidence showed there had been no drawings of said bonds, according to the provisions of the mortgage by the trustees, and that until such drawing the defendant company was not in default for failure to redeem and pay such bonds. (Rec., p. 517.)

The *seventh exception* challenges the correctness of the Master's report that the procurement, on the 22nd day of January, A. D. 1895, of the judgment by James Flanagan against the Columbia Straw Paper Company, before a justice of the peace, was not the result of collusion between the Columbia Straw Paper Company, the trustees and Flanagan. (Rec., p. 521.)

The *eighth and ninth exceptions* of challenge the report the Master that the contention of the defendant that the stock of the company, which passed into the hands of Emanuel Stein by virtue of his contract with the company, was not fully paid up stock, because 21,130 shares of the stock of the company was never in fact issued to Stein but went direct to the organizers and promoters, in pursuance of the agreement and understanding of Stein and the promoters prior to the organization of the defendant company, and without the knowledge and consent of the petitioners. (Rec., pp. 521, 522.)

The *tenth exception* challenges the correctness of the Master that as a matter of law no question can be raised in this proceeding between the stockholders and the com-

pany as to the issuance of the securities of the defendant company and that the defendant company should be permitted to off-set the indebtedness of the bondholders and their stock against the indebtedness of the company on the bonds. (Rec. p. 522.)

The *eleventh exception* controverts the finding of the Master that more than one-third of the owners of the bonds had requested the trustees to declare the principal of the 1,000 bonds due, and that the trustees so declared the principal due and that the trustees delivered or served such declaration of the principal and interest being due upon the Columbia Straw Paper Company. (Rec., p. 523.)

The *twelfth exception* goes to the report of the Master that the defendant company was and still is insolvent. (Rec., p. 523.)

The *thirteenth exception* controverts the finding of the Master that all of the issue of said 1,000 bonds was negotiated, sold and outstanding and valid obligations of the Columbia Straw Paper Company, instead of reporting that the bonds in the hands of the parties to whom they were issued were fraudulent and not valid obligations of the defendant, the Columbia Straw Paper Company. (Rec., p. 523.)

Third. The court erred in refusing to enlarge the powers of the receiver so as to authorize the receiver to take possession of the books, papers, records, documents and muniments of title of the defendant company. (Rec., p. 545.)

Fourth. The court erred in refusing to permit the appellants to amend their answer by the amendments tendered for the purpose of showing that the organization of the Columbia Straw Paper Company and the execution of the bonds and mortgage sought to be foreclosed was pursuant to a scheme for the purpose of organizing a trust contrary to the laws of Illinois and the statutes of the United States. (Rec., pp. 545-546.)

Fifth. The court erred in not dismissing the bill filed by the complainants, The Northern Trust Company and Ovid B. Jameson, praying for the foreclosure of the mortgage sought to be foreclosed in the cause, for the reason

that no default was shown which, by the provisions of the terms of the mortgage, would entitle the complainants to the foreclosure thereof. (Rec., p. 546.)

Nineteenth. The court erred in refusing to permit Charles A. Miller to become a party defendant and to plead, answer or demur to the original bill. (Rec., p. 549.)

Twenty-first. The court erred in entering the decree of foreclosure and sale. (Rec., p. 549.)

BRIEF.

I.

NONE OF THE BONDS OR INTEREST COUPONS WERE INTRODUCED IN EVIDENCE, NOR THEIR ABSENCE ACCOUNTED FOR; AND YET THE MASTER COMPUTED AND REPORTED THE INTEREST AND PRINCIPAL OF THE 1,000 BONDS, AND THE CIRCUIT COURT ENTERED JUDGMENT FOR THE AMOUNT AGAINST THE MORTGAGOR CORPORATION, AND A DECREE OF SALE OF THE MORTGAGED PROPERTY, WHICH DECREE WAS APPROVED BY THE CIRCUIT COURT OF APPEALS.

Respondents' evidence before Master. (Rec., pp. 217-239.)

Master's report. (Rec., pp. 265-269.)

First exception to Master's report. (Rec., pp. 508-509.)

Opinion of Circuit Court. (Rec., pp. 525-527.)

Decree. (Rec., pp. 528, 529, 530, 531 and 532.)

Opinion of Circuit Court of Appeal. (Rec., pp. 576-577.)

II.

THE OVERRULING OF THE FIRST EXCEPTION TO THE REPORT OF THE MASTER, AND THE ENTRY OF THE DECREE OF FORECLOSURE AND SALE WITHOUT THE INTRODUCTION OF THE BONDS AND INTEREST COUPONS IN EVIDENCE, CONSTITUTED ERROR FOR WHICH THE DECREE SHOULD BE REVERSED.

Guaranty Trust Co. vs. Green Cove R. R. Co., 139 U. S., p. 137.

Dowden vs. Wilson, 71 Ill., p. 485.

More vs. Titman, 35 Ill., p. 310.

Lucas vs. Harris, 20 Ill., p. 166.

George vs. Ludlow, 66 Mich., p. 176.

Biers vs. Hawley, 3 Conn., p. 110.

Field vs. Anderson, 55 Ark., p. 546.

Schumpert vs. Dillard, 55 Miss., pp. 348-363.

2 Jones on Mortgages, Sec. 1469.

III.

WHEN THE BILL OF COMPLAINT WAS FILED THE PRINCIPAL OF THE BONDS WAS NOT DUE, NOR WAS THE MORTGAGE ENFORCEABLE BY THE RESPECTIVE PROVISIONS OF THOSE INSTRUMENTS.

Provisions of Bond, Rec., p. 25-27.

Provisions of Mortgage, Rec., pp. 30, 31, 34.

IV.

THE DECLARATION OF THE TRUSTEES THAT PRINCIPAL AND INTEREST WERE DUE ON JANUARY 22, 1895, WAS THE DIRECT RESULT OF COLLUSION BETWEEN THE RESPONDENTS, THE MANAGING OFFICERS OF THE COLUMBIA STRAW PAPER COMPANY, AND THE SYNDICATE, TO BRING ABOUT THE FORECLOSURE; AND THE RESULT WAS THE FLANAGAN JUDGMENT.

Bondholder sent coupons from New York to Wolf (Ev. of Wolf, Rec., p. 483.)

Wolf gave them to Leffinwell, instructing instant suit. (Ev. of Leffingwell, Rec., p. 395.)

Suit, summons, trial, issue of execution inside of twenty-five minutes, on January 22nd, 1895, after five o'clock P. M.

Transcript of justice of the peace. (Rec., pp. 224-226.)

Declaration of trustees made same night. (Rec., p. 220.)

Mills taken possession of same night after declaration. (Ev. of Heurtley, Rec., p. 235.)

Number of conferences, before Flanagan suit, in regard to taking possession of mills by Northern Trust Company, trustee, between Mr. Smith, President of Northern Trust Company, trustee, and Mr. Jameson, the other trustee, who had been sent for, and Dupee, Judah, Willard & Wolf. (Ev. of Smith, Rec., pp. 272-274.)

Smith, the president, and Heurtley, the secretary of Northern Trust Company, both state ignorance of all details of Flanagan judgment, of declaration of principal, and interest of bonds due; of requests of bondholders, or that they are bondholders or signatures genuine. Everything left to their lawyers.

Ev. of Byron L. Smith, Pres't. (Rec., pp. 271, 272, 273, 274 and 275.)

Ev. of Heurtley, Sec'y. (Rec., pp. 222, 223, 224, 226, 229, 231, 233, 237, 238, 295, esp. 296.)

Notification by Wolf to Guggenheimer, Untermeyer & Marshall in New York, and preparation of bill for foreclosure. (Rec., pp. 562, 563, 566.)

V.

THE ACTION OF THE TRUSTEES IN DECLARING THE PRINCIPAL OF THE BONDS AND THE INTEREST DUE, BECAUSE THE MORTGAGOR CORPORATION HAD NOT PAID THE EXECUTION ISSUED UNDER THE FLANAGAN JUDGMENT, WAS WRONGFUL AND CAN NOT BE SUSTAINED.

Union Mutual Life Ins. Co. vs. Union Mills Plaster Co., 37 Fed. Reps., 289.

Bennett vs. Lycoming, etc., Ins. Co., 67 N. Y., p. 274.

Anderson's Law Dict., Title "Forthwith."
2 Cook on Corporations, Sec. 772 (4th Ed.)

Pugh vs. Fairmount Mining Co., 112 U. S.

5 Thompson on Corporations. Sec. 6124.

VI.

THE BONDS OF THE COLUMBIA STRAW PAPER COMPANY SECURED BY THE MORTGAGE SOUGHT TO BE FORECLOSED, ALTHOUGH NEGOTIABLE IN FORM, HAD THEIR NEGOTIABILITY DESTROYED BY STIPULATIONS RENDERING THEIR PAYMENT SUBJECT TO CONTINGENCIES.

Jones on Corporate Bonds and Mortgages,
Sec. 191.

Union Cattle Co. vs. International Trust Co.,
149 Mass., p. 492.

McClelland vs. Norfolk R. R. Co., 110 N.
Y., p. 476. 18 N. E. 238.

Evertson vs. National Bank of Newport,
66 N. Y., p. 14.

Crouch vs. Credit Foncier of England, L.
R., 8; Q. B., p. 374.

VII.

THE PURPOSE AND OBJECT OF THE PROMOTERS WAS
TO ORGANIZE AN UNLAWFUL COMBINATION IN RE-
STRAINT OF TRADE AND COMMERCE,—THE ORGANI-
ZATION OF THE COLUMBIA STRAW PAPER COM-
PANY, THE EXECUTION AND DELIVERY OF THE
BONDS AND MORTGAGE WERE ACTS IN PURSUANCE
THEREOF AND THEREFORE BOTH ARE VOID.

Mortgage and form of bonds. (Rec., pp. 19-45.)

Letter of Untermeyer. (Rec., p. 422.)

Record, pp. 368-400.

Fifth exception to Master's Rep. (Rec., pp. 512-517.)

Act of congress of July 2, 1890, Chap., 647, p. 209.

Anti-trust act of Illinois.

Starr & Curtis' Revised Statutes 1896, p.
1252.

Richardson vs. Buhl, 77 Mich., p. 632.

United States vs. Freight Assn., 166 U. S.,
p. 290.

The answer should have been amended and the prayer
of the Miller petition granted.

Chicago, Milwaukee & St. P. R. R. Co. vs.
Third National Bank of Chicago, 134 U.
S., p. 276.

VIII.

THE COURT ERRED IN ENTERING THE ORDER STRIKING THE CROSS-BILL FROM THE FILES AFTER IT HAD BEEN ANSWERED AND REPLICATIONS FILED AND IN REFUSING TO VACATE THIS ORDER.

Cross-bill was filed under leave of court granted upon petition. (Rec., p. 85.)

Cross-bill. (Rec., pp. 99-116.)

Answer of Dupee *et al.* to cross-bill. (Rec., pp. 131-141.)

" " Emanuel Stein to cross-bill. (Rec., pp. 141-155.)

" " Columbia Straw Paper Company. (Rec., pp. 157-164.)

" " Northern Trust Company. (Rec., pp. 156-157.)

Order extending time for cross-defendants, Solomon Maux, James Flanagan, Randolph Guggenheimer, Samuel Untermeyer, Maurice Untermeyer and Moses Weiman to answer cross-bill. (Rec., p. 164.)

Replications to answers to cross-bill of Columbia Straw Paper Company, Northern Trust Company, Emanuel Stein and Charles A. Dupee, *et al.* (Rec., pp. 164-168.)

Demurrer of Flanagan. (Rec., p. 170.)

Demurrer of Marx. (Rec., p. 171.)

Answer of Samuel Untermeyer. (Rec., pp. 173-184.)

Joint and several answer to cross-bill of Randolph Guggenheimer and Isaac Untermeyer. (Rec., pp. 185-194.)

Joint and several answer to cross-bill of Maurice Untermeyer and Moses Weinman. (Rec., pp. 195-205.)

Answer of T. T. Ramsdell to cross-bill. (Rec., pp. 206-210.)

Replications to answer of Samuel Untermyer. (Rec., p. 211.)

Replication to answer of Maurice Untermyer. (Rec., p. 212.)

Replication to answer of Randolph Guggenheimer (Rec., p. 213.)

Replication to answer of Thomas T. Ramsdell. (Rec., p. 214.)

Order striking cross-bill from the files. (Rec., p. 256.)

Order denying the motion of petitioners to vacate the order striking the cross-bill from the files. (Rec., p. 265.)

After a bill is answered it can *only be disposed of* at *final hearing*.

Betts vs. Lewis, 19 Howard, p. 72.

Payne vs. Cowan, 1 Smed. & M., (Chan. Miss.), p. 35.

Glegg vs. Leigh, 4 Madd., p. 191.

Bronson vs. L. & M. R. R. Co., 2 Wall., p. 283.

Lantz vs. Gordon, 28 Fed. Rep., p. 264.

White vs. Bower, 48 Fed. Rep., p. 187.

Ames vs. Lee, 2 Black, pp. 499-509.

2 Daniel's Chan. Practice, p. 1547.

L. R. Co. vs. Bradley, 10 Wall, p. 299.

Kingsbury vs. Buckner, 134 U. S., p. 650.

Jones vs. Smith, 14 Ill., p. 229.

Brandon vs. Prime, 14 Blatchf., p. 371.

Equity Rule 94.

Bayless vs. Ry. Co., 8 Bissell, p. 193.

Thomas vs. R. R. Co., 101 U. S., p. 71.

Thomas Trustee vs. Ry. Co., 109 U. S., p. 552.

Morawetz on Corp., Section 306.

IX.

THE COURT ERRED IN HOLDING THAT THE EVIDENCE DID NOT SUPPORT THE CONTENTION OF THE PETITIONERS THAT THE STOCK OF THE COMPANY WHICH PASSED INTO THE HANDS OF THE BONDHOLDERS BY VIRTUE OF THE CONTRACT WITH STEIN WAS NOT FULLY PAID UP BY STEIN, AND THAT THE LIABILITY ON SUCH STOCK SUBSCRIPTIONS CANNOT BE OFF-SET AGAINST THE LIABILITY OF THE COMPANY ON THE BONDS.

Master's report. (Rec., p. 268.)

Ninth exception. (Rec., p. 522.)

Opinion of Circuit Judge. (Rec., pp. 525-526.)

Record of Circuit Court of Appeals. (Rec., p. 575.)

Evidence, pp. 367-371-400.

Cost of thirty-nine mills, number acquired, \$2,788,000.
(Rec., pp. 343-344.)

Paid therefor \$5,000,000. (Rec., pp. 309-401.)

Contrary to option contracts. (Rec., p. 503.)

Promoters agreed in advance how they would divide the surplus stock. (Rec., pp. 312-313-325.)

THE TRANSACTION WITH STEIN DID NOT AMOUNT
TO A SALE.

Butler vs. Thompson, 92 U. S., p. 412.

Webster vs. Upton, 91 U. S., p. 65.

Thompson on Corp., Vol. 1, Secs. 456-457-458-460.

Story's Eq. Juris., pp. 1430-1445.

Lloyd vs. Preston, 146 U. S., 630.

Brewster vs. Hatch, 122 N. Y., 349.

The transaction between Stein, Untermeyer and their associates and the corporation amounted to this: They subscribed for \$2,113,000 of stock, but instead of paying therefor secured an agreement from the company that they would for \$1,000,000 advanced be given fully paid up stock of \$2,113,000 and a mortgage back on the property of the corporation for the money advanced, and consequently the bonds are void.

Morrow vs. Iron & Steel Co., 87 Tenn.

Sawyer vs. Hog, 17 Wall., p. 610.

EVERY SHAREHOLDER IN THE CORPORATION IS ENTITLED TO INSIST THAT EVERY OTHER SHAREHOLDER SHALL CONTRIBUTE HIS RATABLE PART OF THE COMPANY'S CAPITAL FOR THE COMMON BENEFIT.

Morawetz on Private Corporations, Sec. 270, 286 and 288.

Clark vs. Bever, 139 U. S., p. 96.

Set-off is enforceable in equity where there are mutual debits and mutual credits, or where there exists some equitable consideration or agreement between the parties which would render it unjust not to allow set-off.

Gray vs. Rollo, 18 Wall., p. 629.

Wanzer vs. Truly, 17 Howard, p. 584.

Story's Equitable Jurisprudence, Secs. 1430-1445, 3rd Ed.

Goodwin vs. Kency, 46 Conn., p. 563.

POINTS OF ARGUMENT.

1. The court erred in rendering a final decree of foreclosure and sale, without the production in evidence of the bonds and coupons (p. 53 *post.*)

2. The court erred in rendering a final decree of foreclosure and sale based on the declaration of the trustees predicated solely on the Flanagan judgment, when the principal of the bonds was not due by the terms thereof or the mortgage. (p. 61 *post.*)

3. The court erred in holding the bonds to be negotiable. (p. 70 *post.*)

4. The court erred in refusing to allow the amendment to the answer, after evidence taken, setting up as a defense that the bonds were not enforceable, as disclosed by the evidence, because issued as a means of organizing a "trust" or unlawful combination in restraint of trade.

The court erred in not refusing to enter a decree of foreclosure and sale of its own motion, as soon as the "trust" feature appeared established by the evidence (p. 73 *post.*)

5. The court erred in entering an order to strike the cross-bill from the files, and in refusing to vacate said order, and to reinstate the cross-bill (p. 77 *post.*)

6. The court erred in holding that the evidence did not support the contention of the petitioners that there is a liability enforceable in this cause, on the bondholders holding stock, that is not paid for to the Columbia Straw Paper Company, amounting to \$2,113,000, and which indebtedness of each bondholder should be set off against the indebtedness on each bond (p. 86 *post.*)

ARGUMENT.

I.

THE COURT ERRED IN RENDERING A FINAL DECREE OF FORECLOSURE AND SALE, WITHOUT THE PRODUCTION IN EVIDENCE OF THE BONDS AND COUPONS.

The mortgagor corporation, Columbia Straw Paper Company, was sole defendant.

Petitioners, as stockholders of defendant, were allowed to defend against the foreclosure because the bondholders were in control of the corporation, and the mortgagor was not making any defense. Petitioners, in their answer, while admitting that the bonds secured by the mortgage had been, in fact, executed by the mortgagor-corporation, expressly denied that such bonds were duly issued, negotiated and sold, or were outstanding and valid obligations of the defendant corporation.

The Master found and reported that all the bonds, 1,000 in number, were negotiated and sold, and were outstanding and valid obligations of defendant corporation, and that they were secured by the mortgage sought to be foreclosed. He further found and reported that there was interest due on the bonds and unpaid (whether evidenced by interest coupons or not, he did not report), to the amount of \$249,632.86.

For such principal and interest (\$1,249,632.86), he recommended the foreclosure of the mortgage and sale of the mortgaged premises.

The Circuit Court overruled the exceptions (1st and 2d, R., pp. 508-509) of petitioners taken to the report of

the Master in finding and reporting as above, and held (opinion of court, R., p. 526), that the production of the bonds and interest coupons, in evidence, was not necessary until *after* the sale of the mortgaged premises, when the distribution of the proceeds of sale was about to be made. (R., 527.)

That view was also taken by the Circuit Court of Appeals, which held (on the theory *ab inconvenienti*), that it would be impracticable to require all the evidence of mortgage indebtedness to be presented in cases like the one at bar, before entering the decree of foreclosure and sale. On page 577 of the Record, the court say:

"In these cases where bonds issued by railroads or other large corporations on a large scale, and held in trust by trustees, but really owned by persons in many parts of the civilized world, it has not been the practice, nor would it be practicable to require the bonds to be produced before the court or Master before a decree *nisi* is entered. The practice has uniformly been to enter a decree of sale without the production of the bonds. Of course they cannot be paid or share in the proceeds of sale until brought into court for payment and cancellation. In many cases years elapse after a decree is entered before all the bonds are brought in, the money lying in the registry of the court awaiting their presentation for payment, and in some cases all the bonds are never produced or paid. If the rule required all the bonds to be produced before the court or Master before a decree for sale could be made, it would in many cases be a practical denial of justice. No such practice has ever obtained to our knowledge. The sale is made for the benefit of all properly concerned. The decree is not final as to the persons or debts entitled to share in the proceeds. When the time for distribution arrives any creditor may challenge the title of the claimant of any bond presented."

It was urged upon both lower courts, on behalf of petitioners, that, admitting there was evidence before the Master which *prima facie* made a case of a mortgage duly executed, and sufficient mortgage indebtedness outstanding, and other facts to justify a decree of *foreclosure*, yet there ought not to be a *final decree* of sale until the cause should be again referred to the Master to ascertain and report the amount of the bonds and coupons outstanding. That in order to make such finding, the Master must have before him competent, legal primary evidence of such mortgage indebtedness, viz., the bonds and interest warrants, with the evidence of their respective owners or holders, as to the circumstances under which they came into their ownership or custody. (See Rec., 381, ll. 7, 8, 9 and 10.)

Petitioners insisted upon such proof, not to delay mortgagees or to throw legal obstacles in their way, but for the purpose of showing upon such examination that the owners and holders of the bonds and interest warrants had come by the same as part of the wrongful scheme to defraud the mortgagor-corporation and petitioners and other honest stockholders.

Their counsel before both courts, as well as before the Master, cited numerous cases where it had been held that, before a decree of *foreclosure and sale* could be ordered (*i. e.*, a final decree), it was indispensable that *proof* should be made of the amount of the mortgage-debt, even (in some cases) where a default had been taken against the mortgagor.

Their contention before both courts and the Master, as well as here, was, that it was not a question of what would

be the more *convenient* practice, but of *substantive legal requirement*; that the mortgagor had a legal right, before its property should be sold to satisfy its mortgage indebtedness, to have that indebtedness judicially ascertained by legal proof.

Both the Circuit Court and the Circuit Court of Appeals seemed to regard the decree which was entered, as a decree *nisi*, and that the *final decree* would not come until the property should have been sold, its proceeds paid in and be ready for distribution amongst the mortgagee-bondholders; when the court should come to finally direct the disposition of the proceeds of sale.

But it was submitted for petitioners, that this very decree was *final* as to the mortgagor-corporation; that before its property should be sold, the amount of its indebtedness, under the mortgage, should be ascertained by legal methods; so that if it should elect, it might pay the very amount thereof and prevent a sale; or, if a sale should be made, the amount necessary to be produced on such sale should be judicially ascertained; because from such sale, the defendant corporation could redeem in twelve months, by paying the amount of the sale with interest.

Counsel for petitioners urged upon the lower courts, as well as upon the Master, that for the Circuit Court to order a sale of the mortgage-premises, before requiring legal evidence of the mortgage-debt, with the purpose, as announced in the opinion of the learned Circuit Court of Appeals, of afterward requiring such evidence when the proceeds of the sale of the property should be ready for distribution amongst the bondholders, would be to postpone an

indispensable legal requirement in disposing of the controversy between mortgagees and mortgagor, until it would be *too late* to afford the latter any redress, in case the Master and the Circuit Court had *estimated* or *guessed* the mortgage-debt at too great a sum.

Whatever may be the result of any subsequent controversy between the bond holders over the distribution of the proceeds of sale cannot concern the mortgagor, because it will not be a party to such controversy. Its indebtedness has been fixed; its property will have been sold to pay that indebtedness; and if, in the subsequent distribution of the proceeds of sale, it shall be found that the indebtedness was fixed at too great an amount, that discovery will come at too late a stage in the proceedings to give the mortgagor any relief.

That the above propositions are supported by the decisions, we refer the court to the following cases:

Dowden vs. Wilson, 71 Ill., pp. 485, 487-488.

Moore vs. Tiltman, 35 Ill., p. 310.

Lucas vs. Harris, 20 Ill., p. 166.

George, Admr., vs. Ludlow, 66 Mich., p. 176.

Biers vs. Hawley, 3 Conn., p. 110.

Field vs. Anderson, 55 Ark., p. 546.

Schumpert vs. Dillard, 55 Miss., pp. 348, 363.

2 Jones on Mort., Sec. 1469.

Shellaber vs. Robinson, 97 U. S., p. 68.
(Trust deed in equity is a mortgage.)

The learned Circuit Court of Appeals, it is submitted, was in error in the construction it places on the cases of *Guarantee Trust Co. vs. Green Cove Springs and M. R. Co.* (139 U. S., p. 150), and *Toler vs. Railway Co.* (67 Fed., p. 168.)

In the former case in foreclosure proceedings the bill set up that \$25,000 of bonds were outstanding and unpaid. One defense of the answer was that there were no bonds outstanding, and that complainants had no interest to maintain the suit. The case was referred to a Master, and \$23,000 of bonds, upon notice, were filed with him, leaving \$2,000 of bonds unaccounted for. At this point the court dismissed the bill, evidently on the theory that the bonds were invalid. On appeal, this court reversed the case. It seems that the appellants, representing the \$23,000 of bonds only, asked this court, in case of reversal, to specifically direct the Circuit Court "at this stage of the case to "determine as a finality the amount, validity and ownership "of such bonds, or the number which were held *bona fide* "by the present holders."

This court refused this request, and from the opinion it was evidently on the ground that there appeared to be \$2,000 of bonds still outstanding *and which had not yet been produced before the Master*, and that until these were produced, or their absence accounted for, no final decree of foreclosure and sale could be had. It directed the court below to proceed with the case, in conformity with its opinion, on all questions involved in the appeal, and recognizing what must finally take place, added at the close of the opinion:

"Should the court proceed to a decree for foreclosure and sale, the holders of the bonds can be notified to appear and file them before the Master, and all questions connected with their amount and ownership can be settled upon a *final hearing*."

As the \$23,000 of bonds had been already filed with the

Master, the opinion of the court referred to the \$2,000 only that had not been presented; and the presence of which, or a satisfactory explanation of the absence of which, would justify a final decree of foreclosure and sale, and which would be rendered only *after and upon* a final hearing.

In this case it appears from the opinion on pages 576 and 577 that the Circuit Court of Appeals bases its opinion on the language used by LURTON, J., in *Toler vs. Ry. Co.*, *supra*. We submit that that case has been thoroughly misunderstood in every particular, and that the whole force of that opinion is summed up in the statement that where a decree *nisi* is rendered on admissions as to ownership of coupons, and default, and amount of default in payment of interest, there is no reason for requiring the production of bonds. That upon such a decree, and the payment of the same into the registry to save a decree final, or one of foreclosure and sale, then the question of distribution of these moneys can be enquired into, as the decree *nisi* does not determine the particular person to whom the debts are due, and is not final "as to the persons or debts entitled to share in the proceeds." After such payment the mortgage-defendant would have no further interest in the distribution of these moneys.

The *Toler* case (later down on page 181, recognizing the rule laid down in *Fosdick* case, 106 U. S., p. 47. that no sale of mortgaged property can be had to pay overdue interest only, found under a decree *nisi*) proceeds further to say that if a decree *nisi* is not satisfied by payment, and it becomes necessary to render an absolute decree of foreclosure and sale of the property, then a hearing must be had before the Master on "all questions connected with the

"amount due each [bondholder], and of ownership of "bonds and coupons," *and for this express purpose "the holders of bonds can then be required to produce their bonds and coupons before a Master."*

The Court of Appeals seems to think that this hearing was to be had *after* a sale of the property on final decree, and not that the final decree shall be based on such proceeding before the Master. Upon such sale, it is said in the Toler case that the purchase money will take the place of the trust share. "The distribution will be in satisfaction *pro rata* of *all* the bonds, principal and interest." This can readily be done, because all those matters as to ownership of bonds and amounts due each bondholder has been fixed in the decree absolute of sale *before* sale. The mortgagor-company in this way will have had its day in court on every question in which it could have any possible interest. But in such proceeding as the Court of Appeals suggests, the mortgagor-company would not have had its day in court on any question whatever in which it might have any interest.

That the decree entered in this cause was a final hearing of this cause, consummated by a final decree, see:

Hozell vs. Western R. R. Co., 94 U. S., 463, p. 466.

Forgay vs. Conrad, 6 How, p. 201.

Railway Co. vs. Sweeney, 23 Wall, p. 405.

Whiting vs. Bank, 13 Pet., p. 15.

Grant vs. Insurance Co., 106 U. S., p. 429.

R. R. Co. vs. Souther, 2 Wall., p. 440.

Blossom vs. R. R. Co., 1 Wall., p. 655.

Hinckley vs. R. R. Co., 94 U. S., p. 467.

Ray vs. Law, 3 Cranch, p. 179.

Bronson vs. R. R. Co., 2 Black, p. 524.

R. R. Co. vs. Fosdick, 106 U. S., p. 47.

First National Bank vs. Shedd, 121 U. S. p. 74.

Bostwick vs. Brinkirhoff, 106 U. S. p. 3.

Stovall vs. Banks, 10 Wall., p. 583.

It is therefore respectfully submitted that this is the only case to be found in the books, of a decree for the foreclosure and sale of mortgaged premises being allowed to stand, where no evidence was introduced of the amount of the mortgage-debt outstanding by the production of the instruments representing the same, or their absence being accounted for, and where there was no waiver by the contract of the parties or by their stipulation in the pleadings.

II.

THE PRINCIPAL OF THE MORTGAGE INDEBTEDNESS WAS NOT DUE BY THE TERMS OF THE BONDS OR MORTGAGE; AND AS THE ONLY GROUND UPON WHICH THE TRUSTEES DECLARED, THE PRINCIPAL OF THE BONDS TO BE DUE, WAS THE FAILURE TO PAY THE EXECUTION ISSUED UPON THE FLANAGAN JUDGMENT, THERE WAS NO RIGHT TO THE DECREE WHICH WAS ENTERED.

While the provisions of the bonds and the mortgage securing the same may not be unique in the financial world, they are, so far as we have been able to investigate, of such a character as have never hitherto been brought for adjudication before this court.

By those provisions there is no day fixed for the maturity of the bonds, except the stipulations which require The Northern Trust Company (designated as "the Illinois trustee"), to ascertain all drawings to be made in the month of November in each year in the city of Chicago, at a time and place to be designated by one week's previous notice given by advertisement in two daily newspapers, one published in the city of New York and the other published in the city of Chicago. And that immediately after every drawing the mortgagor should cause the numbers of the bonds drawn for redemption to be published in the same manner, and in the same cities, for two consecutive weeks. It is then provided, that "Every bond so drawn for redemption shall become redeemable and be redeemed by the company on the first day of December next succeeding such drawing, at the price of each bond (in addition to all accrued interest) of one thousand one hundred dollars (\$1,100) in gold coin of the United States of the standard of weight and fineness." (Rec., p. 27.)

There is no evidence in this record that any such drawing was ever made in any year, and the fact is, no drawing was made. The only promise of the mortgagor to pay the bonds was "and if when the principal moneys hereby secured shall, in accordance with the terms and subject to the conditions as to payment and otherwise hereinafter mentioned or referred to, become payable." (p. 25.)

The respondents seem to have been aware of such conditions of the bonds and mortgage when they made the declaration of January 22, 1895, because they proceeded wholly upon the default of the company in having failed to discharge or pay the execution issued under the judgment

by Flanagan, and in that declaration, based upon the above fact, they declared "the principal and all interest owing upon the 1,000 bonds named and described in said trust deed to be immediately payable." (Rec., p. 220.)

James Flanagan, the plaintiff in that suit, was a bondholder and a client of Guggenheimer, Untermeyer & Marshall, eastern counsel of defendant company. He sent six of his forty coupons to Henry M. Wolf, of the law firm, who are respondent's solicitors. Mr. Wolf gave the coupons to an attorney, Mr. Leffingwell, with instructions to bring suit immediately. (pp. 395, 396.) This was done the same day, on January 22, 1895. Summons was issued returnable January 28, and served on Philo D. Beard, the president of the company, on the same day it was issued, at 5 o'clock P. M. On that same afternoon Mr. Beard appeared before the justice of the peace and waived service, (although he had already been served), and consented to an immediate trial, which resulted in a judgment for \$180. (Rec., p. 224.) Execution being sworn out, it was issued and placed in the hands of the constable at 5 o'clock and twenty-four minutes *that evening*. (p. 225.) Later, on the same day, the trustees executed the written document declaring the principal of the million dollars due, *on no other ground than that the company had not paid the execution*; although, as shown by the execution itself, there was no demand made by the constable for payment, and later the execution was returned *nulla bona*. (p. 220.)

The trustees took possession of the property of the company in the vicinity of Chicago the same night of January 22, all after 5:24 o'clock, the officers or agents of the defendant company making no resistance. (p. 223.)

The president of the Northern Trust Company had been in consultation with the attorneys for the trustees about foreclosing the mortgage and taking possession of the property *for several days* prior to January 22. (p. 272.)

Mr. Jameson, the Indiana trustee residing in Indianapolis, had been called to Chicago before the 22nd of January so as to be conveniently at hand to unite in declaring the principal of the bonds due (p. 274). And in addition, it is the sworn testimony, in the proceeding in the court of New Jersey, of Louis Marshall, of the firm of Guggenheimer, Untermyer & Marshall, that the bill of foreclosure in the suit was prepared in their office by him. (Rec., pp. 562 and 566.)

If Mr. Beard, as the president of the company, and using its name, had an arrangement or understanding with any one to have the judgment entered when it was, that constituted collusion between him and such other person. Upon this point the Master reported that the evidence did not sustain the contention of the petitioners that there was collusion. Seventh Exception (R., p. 521.)

The Circuit Court could see nothing illegal or amounting to collusion in the sense of fraud in the procurement of the Flanagan judgment (Rec., p. 527). It is realized that the report of the Master upon the facts, and his conclusions therefrom are entitled to great weight, but in this part of the controversy there are no disputed questions of fact. The bondholders, or some of them, desired to bring about a declaration by the trustees of the immediate maturity of the principal and interest of the bonds, and to obtain possession of the mortgaged property, and ultimately a foreclosure and sale. (Rec., 229-231.) The mortgagor corporation, by its officers and attorneys, who

were acting in the same interest with the bondholders, desired the same thing. (Rec., 562, 563, 564-566.) If all the bondholders and officers of the mortgagor represented all the interests in the mortgagor's property there would be no cause of complaint (Rec., 375-377.) They represented the bonds and to a large amount the stock, but there were other stockholders not similarly situated. Therefore, the rights of those minority stockholders in the mortgagor-corporation and its property could not be sacrificed except in accordance with the contracts of the parties and in conformity to law. The contract, as contained in the bonds and mortgage, certainly did not mean a mere colorable case where an execution was procured by the bondholders and their trustees on the one hand, and the mortgagor on the other, to be issued for the purpose of creating the condition upon which the principal of the bonds and interest might be declared to be immediately due and payable. The provision in question was for the protection of the bondholders from having their security impaired through the default of their mortgagor. (Rec., 31, Art. 3, Sec. 4.)

In the first place, it would seem to strike the moral sense of a court of equity, as something extraordinary that a million dollars of mortgage indebtedness, none of which was due, should be declared to be immediately due and payable for the sole reason that the mortgagor had not paid an execution for the trifling sum of \$180 which could not be levied on the mortgaged property. In the second place, it appears still more extraordinary when that execution was procured to be entered by one of those same bondholders upon the interest coupons belonging to his bonds, and under the direction of a firm of attorneys who had been act-

ing almost, up to that time, as attorneys for the mortgagor, corporation. And in the third place, that the mortgagor, corporation, having five days in which to answer, had waived the time by the president himself appearing before the justice of the peace where the case was pending, on the same day on which service had been made upon him, and consenting to go to immediate trial without offering any evidence on behalf of his company. And lastly, that on the evening of the same day, without any demand having been made upon the defendant corporation, the trustees in the mortgage later than five o'clock and twenty-four minutes P. M. had made the declaration.

If the execution sued out on this judgment could not be levied upon the mortgaged property, it was of no force and effect, and therefore not a cause for declaring the principal of the bonds due under the paragraph just mentioned. All the property of the company was covered by the mortgage. That the constable could not have levied the execution upon the mortgaged premises is clear from the authorities.

In 2d Cook on Corporations, Sec. 772 (4th Ed.) the author says:

"A coupon-holder may sue at law on an overdue coupon, but it is well settled law that neither a mortgage bondholder, nor the holder of a coupon can levy an execution upon the mortgaged property in order to enforce a judgment obtained upon the bond or coupon. There are two reasons for this rule: First, that a mortgagee at common law can not so enforce his security; second, other bondholders and coupon holders are entitled to participate equally in the security."

Also *Pugh vs. Fairmont Mining Co.*, 112
U. S., p. 238.

Also Thompson on Law of Corporations,
Vol. 5, Sec. 6124.

Was the defendant company in default in not paying this execution for \$180 during the 22d day of January, 1895, when the judgment was rendered at 5 o'clock and twenty-four minutes on the evening of that day, and no demand had been made upon the company for its payment; no evidence appearing in the record that the company had any knowledge that the execution was sued out? The provision in paragraph 4 of the 3d article of the mortgage, is that the company is only to be placed in default when it shall not discharge *forthwith* upon such execution being levied, etc. What is the term "forthwith" to be held to mean here? Certainly it should be construed so as to give it a reasonable interpretation under all the provisions of the mortgage and bonds and the circumstances of the case.

The statutes of Illinois provide that no execution shall be issued by a justice of the peace until after the expiration of twenty days from the date of the judgment, unless the party applying for the execution shall make oath that he believes the debt will be lost unless execution be issued forthwith, when it may issue immediately; but that no sale under any such execution shall take place within twenty days from the date of the judgment, nor that the issue of such execution shall deprive either party of the right to appeal. The defendant company here had twenty days in which to either pay, or appeal from, the judgment. The question, then, is, as to whether a reasonable time for the company, either to appeal from the judg-

ment or pay it, would not have been at least until business hours on the following day, under penalty of having a million dollars of its mortgage bonds declared to be immediately due and payable and its property taken out of its possession. The statement of the proposition ought to carry with it the answer.

In the case of *Bennett vs. Lycoming, etc., Ins. Co.*, 67 N. Y., p. 274, the insurance company defended the case on the ground that the policy contained a provision that the insured should "*forthwith*" give notice of the fire and loss to the secretary of the company, and within thirty days after the loss deliver to him a particular account of the loss. The company claimed that the plaintiffs were not entitled to recover because they had not given notice to the secretary until twenty-six days after the fire. The Court of Appeals held that this was within a reasonable time, and say on pages 276-277:

"This notice was given on the 26th day after the fire; and the question was, whether under all the circumstances, it was given 'forthwith' within the meaning of the policy. The word 'forthwith' does not here mean immediately or instantaneously after the fire. It means, and has been held to mean, within a reasonable time or with reasonable diligence after the fire. (*N. Y. Cen. Ins. Co. vs. Nat. Protection Ins. Co.*, 20 Barb., p. 468; *Inman vs. Western Fire Ins. Co.*, 12 Wend., p. 425.) *What is a reasonable time depends upon all the circumstances of the case.*" (See also *Moffat vs. Dixon*, 3 Col., p. 314.)

In Anderson's Law Dictionary the definition given to the term "forthwith" is: "Has a relative meaning and will imply a longer or shorter period, according to the nature of the thing to be done."

The trustees could not take advantage of the failure of the mortgagor to pay this execution, as the procurement of the entry of that judgment and the issue of the execution thereunder were acts procured to be done by themselves, or by their attorneys acting for them, which is the same thing. Under the provision of the mortgage in question, if the mortgagor was in default in the eye of a court of equity, then that default is clearly one brought about by the respondents themselves; and if the principle involved in the old legal maxim, that no one shall take advantage of his own wrong, applies to the conduct of the trustees here, their action in declaring the bonds to be immediately due and payable, and in bringing this bill for foreclosure, will not be allowed to stand.

In the case of the *Union Mutual Life Insurance Company vs. The Union Mills Plaster Company, et al.*, 37 Fed. Rep., at page 289, the court say:

"That it is competent for parties to stipulate that on default in the payment of an installment the whole may become due at the election of the parties, is well established, and courts of equity will give such stipulations effect when they have been fairly made and the right of election fairly exercised. (*Voonan vs. Lee*, 2 Black, p. 499; *Olcott vs. Bynum*, 17 Wall., p. 62.) It will not, however, aid in the enforcement of such right where the conduct of the payee indicates artfulness, trickery or stratagem in bringing on the technical conditions upon which he exercised his right; his purpose must have been open and honest, and advantage can not be taken of any misleading produced by his own action, or (what is the same thing) the reasonable implication contained in it. (*Noyes vs. Clark*, 7 Paige, p. 170; *Broderick vs. Smith*, 26 Barb., p. 539."

III.

THE BONDS OF THE COLUMBIA STRAW PAPER COMPANY SECURED BY THE MORTGAGE SOUGHT TO FORECLOSED, ALTHOUGH NEGOTIABLE IN FORM, HAD THEIR NEGOTIABILITY DETROYED BY STIPULATIONS RENDERING THEIR PAYMENT SUBJECT TO CONTINGENCIES.

The bonds were not produced at the hearing either before the Master or the court below, and therefore this court have to depend upon the blank form of bonds set out in the copy of the mortgage attached to and made part of the bill, from which it appears that the bonds "are to be *substantially* in the following 'form.'"

The Record is absolutely silent as to whether the bonds issued, were substantially in this form, or in a form entirely different.

1. The bonds do not contain any agreement to pay one thousand dollars *absolutely* and at all events.
2. They do not contain any agreement to pay one thousand dollars at a specified time, or at a time that can be exactly ascertained.
3. The payment of the one thousand dollars is dependent upon conditions endorsed thereon, and among the conditions thus endorsed thereon is condition 5, that it will redeem certain bonds. This redemption is further subject to the condition that drawings are to be had under the direction of the Northern Trust Company, to *ascertain the particular* bonds to be redeemed. Without the Northern Trust Company directs the drawing there can be no redemption or repayment.
4. The redemption is to be made out of a special fund, known as the "sinking fund," and not payable generally from the funds of the company.

5. The heading of the bond "due on or before December 1, 1901," is not part of the bond proper, and is not a promise to pay at that time; and further, is not true when read with the agreements in the bond and conditions endorsed thereon.

In Jones on Corporate Bonds and Mortgages, Sec. 191, the author states the essentials of negotiability in corporate bonds. They must be payable to a person, order or bearer. The sum payable must be certain. *The time of payment must be capable of exact ascertainment.*

These bonds contain no agreement to pay at a definite time, nor can the time of payment be exactly ascertained, for the condition of redemption or repayment depends on the action of the Illinois trustee (Northern Trust Company) in first ascertaining by drawing what bonds are redeemable, and this action may never be taken, *and up to the present time has not been taken.*

This case differs from that of the *Union Cattle Co. vs. International Trust Co.*, 149 Mass., p. 492. In that case, under the Massachusetts statute, it was held that the bonds were negotiable although they were made payable out of the sinking fund. There, however, it appeared that the bonds were payable to bearer at a definite time, viz., November 1, 1896. In this case there is no such agreement.

It is held in *McClelland vs. Norfolk R. R. Co.*, 110 N. Y., p. 476 (18th N. E. Rep., p. 238), that in determining the "negotiability" of the instrument, the court is required to examine the bonds and mortgage both, and in that case it was held that the instruments were not negotiable on account of the condition set forth in the mortgage.

It will be found that in the bond under consideration in condition 9, that there is an attempt at an agreement to consider the bonds negotiable as they are to be held "free from any equities between the company and the original or any intermediate holder, etc." In the McClelland case there was a clause of this kind "this bond shall pass by delivery." Again, upon the assumption that this condition is part and parcel of the bond, we find that in the case of *Evertson vs. National Bank of Newport*, 66 N. Y., p. 14; S. C. in 23 Amer. Rep., p. 9, in the latter volume on page 13 that the court cites *Crouch vs. Credit Foncier of England*, L. R., p. 8; Q. B., p. 374, on this proposition:

"Whether the parties to an instrument can give it a negotiable character with all the incidents pertaining to negotiable paper, when it is not in terms within a class of instruments known to the law as negotiable, may be questioned."

In the case under consideration it is the claim of the appellants that all the bondholders are the original bondholders who received the \$2,113,000 of the stock of the company as fully paid without making any payment therefor, and hence the above may have no application unless it should be claimed that some of the bondholders are purchasers in good faith, and for a valuable consideration of the bonds secured by the mortgage sought to be foreclosed in this case, in which case they will hold the bonds subject to any equities the company may have. But there is no evidence in the record of any such transfer. The evidence is otherwise.

IV.

THE CIRCUIT COURT SHOULD HAVE ALLOWED THE ANSWER TO HAVE BEEN AMENDED FOR THE PURPOSE OF SHOWING THAT THE ORGANIZATION OF THE DEFENDANT COMPANY AND THE EXECUTION OF THE BONDS AND MORTGAGE WERE PARTS OF A SCHEME TO FORM A "TRUST," OR UNLAWFUL COMBINATION IN RESTRAINT OF TRADE AND SHOULD HAVE GRANTED THE PRAYER OF THE PETITION OF MILLER.

The purpose of the amendment proposed was to enable the petitioner-stockholders to avail themselves and the company of this defense at the hearing.

Chicago, Milwaukee & St. Paul Ry. Co. vs. Third National Bank of Chicago, 134 U. S., p. 276, was submitted as an authority for this practice.

Not only was this trust or combination in contravention of the act of Congress of July 2, 1890, Chap. 647, p. 209, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," but also in contravention of the anti-trust act of the State of Illinois. The first and fifth sections of the Illinois act are as follows (Starr & Curtis' Revised Annotated Statutes of 1896, p. 1252):

"If any corporation organized under the laws of this or any other State or county, for transacting or conducting any kind of business, in this State, or any partnership or individual or other association of persons whosoever, shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual, or any other person, or association of persons, to regulate or fix the price of any article of merchandise, or commodity, or

shall enter into, become member of, or a party to any pool, agreement, contract, combination, or confederation to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this State, such corporation partnership, or individual or other association of persons, shall be deemed and adjudged guilty of a conspiracy to defraud, and be subject to indictment and punishment as provided in this Act.

"Any contract or agreement in violation of any provision of the preceeding sections of this Act shall be absolutely void."

The attention of both courts at the hearing was brought to this question by the 5th exception to the Master's report. (Trans., pp. 512-517.)

Indeed, the court should of its own motion, it appearing that the mortgage was executed in furtherance of the scheme to form a trust, have dismissed the proceedings to foreclose.

When a contract regarding a kindred trust, Diamond Match Company, was before the Supreme Court of Michigan, and reported as *Richardson vs. Buhl* in 77 Mich., p. 632, SHERWOOD, C. J., used the following language (page 656):

"But an examination of the Record, and the character of the transactions out of which the contract grew, and the object intended to be accomplished by it, as I have found them, raise another, and far more important, question, and which it becomes the imperative duty of this court to pass upon, whether raised by counsel or not.

"When a contract is brought before us for construction and adjudication its validity is necessarily involved, and it is usually the first point to which the attention of the court is challenged by counsel, but in this case,

where, upon the argument, attention was called to this feature of the case, it was allowed to pass by counsel upon both sides without discussion.

"I think no one can read the contract in question, and fail to discover that considerations of public policy are largely involved. The intention of the agreement is to aid in securing the objects sought to be attained in the formation and organization of the Diamond Match Company. This object is openly and boldly avowed. Not only does this appear in its organization, and in the business it proposes to conduct, and in the modes and manner of carrying it on, but the testimony of Gen. Alger himself avers it, and settles its character beyond question."

The letter of Untermeyer at the inception of the negotiations shows the purpose and object of the parties. The options were for the same purpose and object.

The recitals of the resolutions of the stockholders and of the directors of the defendant company authorizing the corporation to make the trade with Stein embodied in the copy of the trust deed exhibited with the original bill, the answers of the defendants to the cross-bill and the testimony taken, establish that it at least was the intention to form a trust or unlawful combination.

In the case of *United States vs. Freight Association*, 166 U. S., 290, on page 319, in speaking of the Act of Congress of July 2, 1890, this court say:

"It is said that Congress had very different matters in view and very different objects to accomplish in the passage of the act in question; that a number of combinations in the form of trusts and conspiracies in restraint of trade were to be found throughout the country, and that it was impossible for the State governments to successfully cope with them because of their commercial character and of their business ex-

tension through the different states of the union. Among these trusts it was said in Congress were the Beef Trust, the Standard Oil Trust, the Steel Trust, the Barbed Fence Wire Trust, the Sugar Trust, the Cordage Trust, the Cotton Seed Oil Trust, the Whiskey Trust, and many others; and these trusts it was stated had assumed an importance and had acquired a power which were dangerous to the whole country, and that their existence was directly antagonistic to its peace and prosperity. To combinations and conspiracies of this kind it is contended that the act in question was directed, and not to the combinations of competing railroads to keep up their prices to a reasonable sum for the transportation of persons and property."

Again, on page 342:

"For these reasons the suit of the government can be maintained without proof of the allegation that the agreement was entered into for the purpose of restraining trade or commerce or for maintaining rates above what was reasonable. *The necessary effect of the agreement is to restrain trade or commerce, no matter what the intent was on the part of those who signed it.*"

V.

THE COURT ERRED IN ENTERING AN ORDER TO STRIKE THE CROSS-BILL FROM THE FILES; AND IN REFUSING TO VACATE THIS ORDER AND TO REINSTATE THE CROSS-BILL.

The cross-bill was filed under leave of court granted upon a petition (Rec., p. 85) prepared according to the 94th equity rule. It will be found on page 100 of the record. It was not filed as a defense, or for discovery; but to obtain on behalf of the original defendant-mortgagor, The Columbia Straw Paper Company, the affirmative relief prayed for therein, which could not be obtained by an answer in equity.

It asked affirmative relief, not for violation of any personal equitable rights of your petitioners (as was the case of *Forbes vs. R. R. Co.*, 2 Woods, p. 323, Fed. Cases No. 4926, cited as authority by the Circuit Court of Appeals, p. 579), but for and in behalf of the defendant company, mortgagor, whose board of directors was under the control of the bondholders, represented by the respondent trustees, and which company had filed an answer denying nothing in the bill.

The court below, as stated in its opinion, bases its action in sustaining the Circuit Court in striking the cross-bills from the files on the following propositions:

(a) That your petitioners were defendants only by the permission and order of court. (Rec., p. 578.)

(b) That the matters set up in the cross bill were substantially those set up in the answer, and, therefore, there was no need of a cross-bill. (Rec., p. 578.)

(c) That the rule regarding the filing of cross-bills by permission is different from the rule in regard to filing original bills, which can not be dismissed on motion. (Rec., p. 579.)

(d) That matters in cross-bill were not germane to matters in original bill. (Rec., p. 580.)

We first submit that, no matter under what circumstances a cross-bill is allowed to be filed in a cause, if once filed, an answer filed to it, as here, then the cross-defendant having answered, has waived whatever right he may have had to move to strike it from the files. *A fortiori*, where replication is filed, and the cause at issue.

Payne vs. Cowan, 1 Smed. & M. Chan. (Miss.), p. 35.

Glegg vs. Leigh, 4 Madd., p. 191.

Betts vs. Lewis, 19 How, p. 72.

(a) That your petitioners were made defendants only by permission of the court, and the cross-bill was filed under leave.

The court below justifies its action in sustaining the Circuit Court in dismissing the cross-bill on the decision in *Forbes vs. Railroad Co.*, 2 Woods, p. 323, Fed. Cas., 4926.

But there is a wide distinction between these cases. In the Forbes case, the defendants filing cross-bills were seeking affirmative relief on behalf of their own private interests and not on behalf of the corporation. It was their individual equitable rights, and not those of the corporation, which were claimed to be invaded. The motion to dismiss went to the action of the court in allowing them to be made parties at all. In this cause, the matters set up in the peti-

tion and alleged in the cross-bill, which was verified by oath, were set up under the provisions of Equity Rule 94. The cross-bill is "founded on a right which may properly be asserted by the corporation." The averments of the cross-bill, with reference to the refusal of the company to assert its rights, were material averments. If insufficient in equity, the question could be raised by demurrer and not by motion to dismiss. When answers were filed, a hearing was the only method of ascertaining their truth. By peremptorily dismissing the cross-bill, as the court did, the corporation has been caused to lose all equitable rights it may have on behalf of its innocent and minority stockholders, which was being urged by this cross-bill against the bondholders represented by the trustees. As is said in *Bronson vs. L. & M. R. R. Co.*, 2 Wall., p. 283, which was decided prior to the promulgation of Rule 94 in Equity:

"It would be a reproach to the law, and especially in a court of equity, if the stockholders were remediless."

Another distinction between this cause and the Forbes case, *supra*, is that in that case the intervenors having made a *prima facie* case, an order, without notice however to the parties to the suit, was entered allowing the intervenors to become parties with leave to answer and file a cross-bill, "As soon, says Mr. Justice Bradley, at page 327, as the "counsel for the complainants and the receiver were informed "of the order for leave to intervene, they applied for a rule "to show cause why said orders should not be vacated and set "aside; and a rule to show such cause was entered accordingly." He vacated the order to intervene and defend but, expressly did so because there was

much doubt whether the defendants were *bona fide* stockholders; that their contention was in behalf of their individual interests, and were *in opposition* to the interests of the company, and because they admitted the truth of all the charges of gross fraud on the part of the board of directors of the company *of whom they were a part*.

In this case there is no dispute as to your petitioners being *bona fide* stockholders, nor of their asserting rights on behalf of the company, which is expressly stated to be under the control of the bondholders. Further, in this case a cross-bill has been filed. In this case the order allowing the intervention is not attacked, but allowed to stand, and the answer of the intervenors is allowed to remain in and a hearing has been had and decree rendered on the same. Your petitioners are held rightly to be in court, and their answer recognized; but they are deprived of the benefit of their cross-bill on grounds which could only apply to vacating the order allowing them to intervene.

(b) That the matters set up in the cross-bill were substantially those set up in the answer, and, therefore, there was no need of a cross-bill.

We submit that the court below in its decision has failed to recognize that in equity a cross-bill may serve for two very different purposes. Affirmative relief in equity is not granted on an answer. It is granted only on a cross-bill. A cross-bill may be used for *defense* merely, or it may be used to obtain *affirmative relief*. In *Lautz vs. Gordon*, 28 Fed., p. 264, the court recognized this distinction by point-

ing out that, when used as a defense, it may set up a legal as well as an equitable defense, whereas, when used to obtain affirmative relief, it must set up facts calling for *equitable relief only*. In the latter case "the cross-bill is of the nature of an original bill seeking further aid from the court."

We believe the court below to be in error in stating that the answer and cross-bill set up substantially the same facts. The cross-bill contains additional facts to those set up in the answer.

The court is also in error, in stating as applied to this cause, that upon the filing of two answers setting up the same matter, one would be struck out on motion, and that the labeling of one of them as a cross-bill would not change the rule (Rec., p. 580.) The sentence does not express the true statement of facts here. It would be better expressed by saying if two pleadings are filed containing the same matter, and in one of which it clearly appeared that it was filed as a defense to the bill, and in bar of the suit; and in the other it clearly appeared that it was filed for the purpose of obtaining *equitable affirmative* relief; the former would be allowed to stand as an answer, the latter, as a cross-bill.

The cross-bill in this cause set up facts, and on those facts asked for an accounting in equity between the defendant company and the bondholders, represented by the respondents, on account of transactions between them and the company at the time of, and in connection with, the execution of the bond and mortgage and issue of capital stock. Under the answer, this equitable affirmative relief could not be granted.

Under Equity Rule 90, affirmative relief must be sought by cross-bill, as in the English High Court of Chancery.

White vs. Bower, 48 Fed., p. 187, citing
Noonan vs. Lee, 2 Black, pp. 499-509; 2 Dan'l
 Chancery Prac., 1547; *R. R. Co. vs. Bradley*, 10 Wall., p. 299.

In *Kingsbury vs. Buckner*, 134 U. S., p. 650, a quotation is made from *Jones vs. Smith*, 14 Ill., p. 229:

"No fitter case could be imagined for a cross-bill than the one which is presented by these pleadings. No doubt upon his answer, he (defendant) was at liberty to prove the facts averred, but this would only defeat Smith's (the plaintiff's) claim for relief; while the *same facts, if established upon a cross-bill*, would entitle him to have satisfaction of the judgment actually entered."

(c) That the rule regarding the filing of cross-bills by permission is different from the rule in regard to filing original bills, which can not be dismissed on motion.

We respectfully submit to this honorable court that there is no logic or reason why the rule should be different. A cross-bill is in substance an original bill filed by the defendant in the cause to obtain affirmative relief, *and also to bring before the court, completely, "the whole matter in dispute."* Dan'l Chancery Pr., *1548. (6th Am. Ed.)

Brandon Mfg. Co. vs. Prime, 11 Blatchf., 371.

If the permission is once given by the court to be made a defendant in the cause, it follows by all the rules of logic and reason that he should be allowed, as a defendant, to assert all his equitable rights, and to obtain all his equitable remedies. On what ground can he be considered in court

to file an answer, but out of court when he attempts to file a cross-bill? The case of *Forbes vs. R. R. Co.*, *supra*, quoted from by the court below, does not hold any such doctrine. The court did not there enunciate the unheard-of rule of practice in equity, that the court would allow the petitioner to become a defendant, recognize him as such, allow his answer to stand, and refuse to strike it out as the court below did in this case (Rec., p. 265), but dismiss the cross-bill for no other reason than that the rule is different as to original and cross-bills.

We submit that the rule is not different. That when a stranger to the original suit is once allowed to become a defendant, and files a cross-bill for affirmative equitable relief; then the rule is that his cross-bill must be tested by demurrer, or, if answered, shall go to a hearing; and that there is no more reason why a cross-bill should be dismissed than should an original bill.

(d) That matters in cross-bill were not germane to the original bill.

Webster defines "germane" to literally mean—near akin; and as a derivative meaning—closely allied—appropriate or fitting—relevant.

The court below says that the original bill is simply to foreclose a mortgage, and therefore the cross-bill is not germane. But this was the *object* only of the bill. The cross-bill was germane to the *subject-matter* of the original bill, which is the execution of the mortgage and bonds for the purchase-money of the milling plants, the validity of the same, *the indebtedness of the company to each holder of the bonds*, and the non-pay-

ment of said indebtedness and the resulting right of foreclosure. The cross-bill sets up an equitable set-off against each holder of the bonds, and asks for an accounting. The case of the *Investment Corp. vs. Marquan*, 62 Fed., p. 960, cited by the court below, does not apply, because in that case the alleged cross-bill was filed *for defense merely*, and in no sense asked for either discovery or affirmative relief; and in fact was not a cross-bill and, not being such, was dismissed.

But on the question of whether the cross-bill was germane or not to the original bill, we submit that it could not be dismissed. On that point it could only be struck down by a demurrer, or fail on the hearing.

Admitting, *arguendo*, that the Circuit Court could dismiss the cross-bill, without demurrer filed, or allowing it to go to a hearing, and after issues closed, on the sole ground that its contents are not germane to the subject-matter of the original bill, we submit that in this cause the subject-matter of the cross-bill is "closely allied, appropriate, fitting and relevant" to the subject-matter of the original bill.

The original bill sets out the execution of the bonds and trust deed, their validity, *the indebtedness of the company to the bondholders*, that the same is due and unpaid.

The cross-bill sets out that, *in and by the same transaction* in which the indebtedness of the company on the bonds was created, the indebtedness of each bondholder on his stock subscription was created; that if the indebtedness of the company on the bonds is valid, the indebtedness of each bondholder on his stock subscription is valid; that if the indebtedness on the bonds is due and unpaid, so is the indebtedness on the stock subscription; that your petitioners, the cross-

complainants, became stockholders at the same time with the bondholders, and by virtue of the same mutual agreement set out in the option-contracts to organize the company; that they had no knowledge of, nor have they ratified or acquiesced in the action of the bondholders in taking their \$2,113,000 of stock without any payment therefor. The cross-bill asks for an accounting as to each bondholder, who is the real party in interest, although represented by the mortgage trustees, and that the respondent, Columbia Straw Paper Company, shall have the affirmative relief of a decree against each bondholder for such amount as shall be found due over and above the amount due on each bond. The debts are shown to be mutual, and to grow out of the same transaction. It is a pure specimen of equitable set-off, which should be allowed.

That your petitioners can obtain such relief in this foreclosure suit seems clear, under

Equity Rule 94.

Bayless vs. Ry. Co., 8 Bissell, p. 193.

Thomas vs. R. R. Co., 101 U. S., p. 71,

Thomas, Trustee, vs. Ry. Co., 109 U. S., p. 552.

Morawetz on Corp., Section 306. Citing authorities.

VI.

THE COURT ERRED IN HOLDING THAT THE EVIDENCE DID NOT SUPPORT THE CONTENTION OF THE PETITIONERS THAT THERE IS A LIABILITY, ENFORCEABLE IN THIS CAUSE, AGAINST THE BONDHOLDERS HOLDING STOCK THAT IS NOT PAID FOR TO THE COLUMBIA STRAW PAPER COMPANY, AMOUNTING TO \$2,113,000, AND WHICH INDEBTEDNESS SHOULD BE SET OFF AGAINST THE INDEBTEDNESS ON EACH BOND.

The Circuit Court held (Rec., p. 525): "There is no basis in this case for any ruling that the holders of the stock referred to, sustain the relation of debtor to the Columbia Straw Paper Company for the price of that stock."

"This is not a case where a stock liability was incurred by certain persons, and afterwards (the liability) gotten rid of in some way without payment."

"The Columbia Straw Paper Company parted with its capital stock for what was agreed to be the value of that stock."

The Circuit Court of Appeals say (Rec., p. 575): "*The main question* is whether there is any liability on the part of the stockholders in defendant company which can be enforced in this proceeding, or set up as a reason for defeating the foreclosure. We are of opinion that these contentions made by the defendants were properly overruled. The prime difficulty was in the lack of evidence to support the allegations of the answer. There was no evidence of any fraudulent overvaluation, or of issuing stock without consideration."

The Circuit Court of Appeals say (R., 575-576), "that the holders of options and the new company, *in the absence of fraud*, could set such valuation on the plants as they chose; that the owners of mills 'wanted more capital;' that the company issued these bonds upon a full consideration of the benefits to be derived to the stockholders by such a proceeding; that minority stockholders who 'knew all about the proceedings,' cannot complain; that possibly Stein received more than he was entitled to, but that this point was a matter of opinion; that there was no fraud or collusion, as alleged in the answer; that the petitioners went into the enterprise with their eyes wide open; that there was no concealment or misrepresentation."

Then follows the statement on page 576, remarkable in view of the foregoing quotations, that "*the terms of the options, the value of the different properties, the conditions of payment, and all other material facts were accessible to the company, and to each stockholder.*"

The opinion then on page 576 admits that if this were a case of a creditor against a stockholder in which a gross overvaluation was shown, a different rule would prevail.

We submit that the evidence establishes that each bondholder is a debtor to the company for the shares of stock that he claims to have obtained through Stein; and that in law and equity he is liable to the Columbia Straw Paper Company for its par value.

The option contract (Rec., pp. 503 to 508) contains the *only* agreements between the petitioners and other mill owners on one hand and Beard and Ramsdell and their

assignee, Emanuel Stein, on the other. There is no dispute on this point. *The contention between the petitioners and respondents is as to the construction of the meaning of these option contracts.*

The petitioners contend that they mean that the Columbia Straw Paper Company should have the right to receive a transfer of the options direct from Beard and Ramsdell, "their nominees or assigns," in order to accept them at prices named; or else, if accepted by them, to receive a transfer of the properties at prices named in the option. In other words, that the Columbia Straw Paper Company was intended by all the parties to the option contract to be the real purchaser of the absolute title to the mill properties at the aggregate of the option prices, either directly or indirectly; and should pay stock directly to the mill owners as part of the purchase price, and should issue bonds directly to the subscribers for bonds.

The contention of the respondent trustees is, that the meaning of the option contract is, that Beard and Ramsdell, "their nominees or assigns," (and hence Stein) having got the options, and accepted them, could in turn sell these very properties to the very corporation organized under the option contracts, at any price above the aggregate amount of the options, however large, that a compliant board of directors of such corporation might be induced or instructed to value such properties.

In deciding between these two contentions, no ambiguity will be found in the option contracts. If any there were, the positive sworn statement of Ramsdell himself, on page

207 of the Record, would remove such ambiguity. He says that it was always understood and agreed by him "*that the said options should be at once* turned over to the corporation itself." Mr. Ramsdell is as capable as Stein, Wolf, Untermyer or Beard to explain the meaning of these agreements, and he is perfectly disinterested as between the petitioners and respondents.

Sherwood, who assisted in taking the options, at page 343 testified: "I never saw that proposition, the proposition of Stein to sell 39 mills to the company for the \$5,000,000 of stocks and bonds, and I never knew a thing of its being made until I found it in the bill along about the 1st day of February of this year" (1895.)

Stein and Wolf both testify in this case. They are both charged in the answer of petitioners with being parties to the frauds therein alleged and for that reason each of them may "well be regarded, therefore, as an adverse witness, whom the party, *by the exigencies of his case*, was obliged to call." This quotation is the language of Hon. Rufus W. Peckham in deciding the case in the New York Court of Appeals of *Becker vs. Koch*, 104 N. Y., p. 394, and in that case the law of evidence (fully quoted in 15th Edition of Greenleaf in Note to Section 442) in such cases is laid down as follows: "Whatever favorable facts the party calling him obtained from such a witness, may be justly regarded as wrung from a reluctant and unwilling man; while those which are unfavorable may be treated by the jury with just that degree of belief which they may think is deserved, considering their nature, and the other circumstances of the case."

Again, "In such a case as that there is no deception. *"The defendant calls the very man he accuses of the fraud as "a witness to prove it."*

We ask the court to judge all the testimony of Stein and Wolf on all matters connected with the answer; and of Huertly as to the Flanagan judgment and the declaration of principal due; by this rule of evidence.

Stein, therefore, as the assignee of Beard and Ramsdell, held these option contracts under their terms for and on behalf of the Columbia Straw Paper Company and those agreeing in the options to become stockholders when it should be organized. He accepted them on October 31, 1892, and the company was organized on December 6, 1892. He became a trustee for the company, and these petitioners and others, and upon its organization an *honest* board of directors would have required from him either an assignment of the options themselves, or a deed to the company of all his interest in the deeds to him from the mill owners executed to carry out their agreements; and would have taken over the mills direct, issuing stock direct to the mill owners, and issuing bonds to the subscribers upon their paying to the company the moneys therefor. These bonds under paragraph 5 of the option contract (p. 505) would have been drawn "*to run not less than ten years,*" and have contained such other provisions as an *honest* board of directors could have honestly approved on behalf of the company. There would not have been provisions for an enforced payment of ten per cent. premium every year.

There is no dispute in the evidence that Beard, Untermyer, Wolf and Stein and their associates got into their

possession and have enjoyed the beneficial ownership of all the surplus stock of \$2,113,000, being the \$4,000,000 of capital stock less the \$1,887,000 paid to the mills. Both petitioners and respondents agree that this \$2,113,000 was obtained by Stein offering to sell the properties embraced in the options to the company for \$5,000,000 payable \$1,000,000 in bonds and \$4,000,000 in stock, and the acceptance of the same by the company. There is no dispute as to the plan by which the bonds and stock, provided in the options, were issued and distributed as far as mere *form* is concerned. (Stein's testimony, Rec., 316 to 334; Wolf's testimony, Rec., 441 to 475.)

The *main question* (to use the words of the Circuit Court of Appeals) now before the court, is whether this plan that was pursued was a *valid sale* so far as these petitioners and the company are concerned. It is a *main question* because under the common law, and under the Incorporating Act of New Jersey of 1875, stock cannot be issued unless its par value is paid for in money, or by property purchased at a valuation *not fraudulent*.

If this plan, although a sale under the New Jersey statutes *in form*, shall be shown to lack any of the essentials of a sale, then these stockholders must be held to be indebted to the company, on the ground that they are held to be implied subscribers by taking it. *Webster vs. Upton*, 91 U. S. p., 65.

In *Butler vs. Thompson*, 92 U. S. p., 412, this court declared the essentials of a valid sale, approving the definition of Mr. Benjamin in his work on sales; and further declared that no valid sale exists if any one of these essentials is lacking. These essentials are:

1. Parties competent to contract.

2. Mutual assent.
3. A thing, the absolute or general property in which is transferred from the seller to the buyer.
4. A price in money paid or promised.

Now, Stein had no "absolute or general property" in the mills transferred,—the "thing,"—nor even the right to acquire the same under the options. He, the alleged vendor, on the one hand, and the "dummy" board of directors, the alleged vendees on the other, both knew this, for Stein's title in the mill properties grew out of and was measured by the options, because he and his assignors, Beard and Ramsdell, could get whatever title they had only from the mill owners. All the title that these options gave to "Beard and Ramsdell, their nominees or assigns" at most was the right to accept the options, and then have title made to them for no other purpose than of "subsequently transferring such properties to the corporation to be organized, pursuant to the terms of this agreement." (Paragraph eighth, Rec., p. 506.) Under the options then the absolute title under the option contract was to remain in the mill owners until payment was made to them by the corporation and *no one else*; and afterwards upon payment, was to vest in the corporation. (Rec., Recital 2, p. 503, paragraphs eighth, ninth and tenth, p. 506.) The fact that the mill owners did execute deeds to him as grantee, which deeds were placed in the hands of the Northern Trust Company long prior to the payment therefor by the company, in no sense gave Stein the absolute title. Such procedure was in direct conformity with paragraphs third, eighth and tenth of the option.

What was done by Stein, Untermyer, Beard and the

"dummy" board of directors afterwards in reference to the proposition of sale; acceptance of such proposition; making of the contract; making of the modification of the contract, all of which is fully set forth in the record at the pages above cited, in no way affected the absolute title that the mill owners had prior to the giving of the options, nor could it in any way affect their agreements in the options themselves; because the evidence shows conclusively that all these proceedings were had absolutely without any knowledge, consent, assent, acquiescence or ratification on the part of these petitioners and the other mill owners; and as the record shows, not one of them knew anything about any of these irregular proceedings in violation of their rights under the options until after the bill was filed on January 22, 1895 (Rec., p. 343), and they were informed in April, 1895 (Rec., pp. 375-376), when they decided upon protecting this company and themselves against the unwarranted proceedings of Stein and the "dummy" board of directors.

Therefore we say one essential element was lacking in this sale.

Another essential element is that there must be "mutual assent." This essential means that the petitioners and the other mill owners on one part and Stein and the board of directors on the other should mutually assent to what was the thing to be sold and what was the price to be paid; and as the petitioners and mill owners were to become stockholders, to the mode of organization if to be different from provision of the options. The options show that the mill owners were selling to the *company only* the absolute title to their mills at an agreed price, and in consideration of their

mills being bought by the company at the price of the options they were to take stock in the new company on the basis of all seventy mills being in. This fact is shown by not only the options, but by Stein's testimony, on page 315 of the Record, that a certain number of tons should be secured, and Mr. Samuel Untermeyer, in his answer to the cross-bill (Rec., p. 182), shows that this number of tons was to be at least 97 per cent. of the entire production of the country; and every member of the firm of Dupee, Judah, Willard & Wolf, in their answer under oath to the cross-bill (commencing at bottom of page 139 and on page 140), set up that the "daily productive capacity of the mills purchased, or to be purchased, was about 339 tons," and the yearly consumption was 90,000 tons. As there are about 300 working days to a year, it is a matter of easy calculation that the members of the firm of Dupee, Judah, Willard & Wolf were of the same opinion as Untermeyer and Stein, that all seventy mills were to be purchased; and this fact is established beyond question by the testimony of Sherwood heretofore set out on pp. 22, 23, 24 and found in the Record, pp. 339 to 341, 345, 346, 358, 368, 369, 370, 371 and 372. Consequently, we say that the assent of the mill owners, as disclosed by the options and the sworn testimony of Stein, Untermeyer, Dupee, Judah, Willard, Wolf and Sherwood, was that they were selling the absolute title of their mills direct to the corporation to be organized and to *no one else* and taking back stock in part payment of the purchase money in the corporation on the basis that at least 97 per cent. of the entire productive capacity of the mills were to be in the corporation and which makes the full seventy mills, as three of them were in process of construction.

The assent of the company as disclosed by the proposition of Stein, resolutions of the stockholders and the board of directors and the contract made by the company with Stein, showed that the assent was to purchase the absolute title to only thirty-nine of these mills, and to purchase it from Stein and not from the mill owners. The fact is that there was no assent at all on the part of the corporation because the evidence shows that the board of directors was a "dummy" board of directors, all of whom were promoters, willing instruments and in the active interest and under the complete control of Untermeyer and Beard.

We therefore say that a second essential element is lacking, and consequently it was not a valid sale as between Stein and the company.

A third essential was a price to be agreed upon, and which is lacking. No one can claim that under the evidence the mill owners by their agreements in the options agreed that these thirty-nine properties should go to the corporation for \$5,000,000. Nor can it be claimed that Stein or the board of directors so understood the options.

What Became the Position of Stein and Those He Represented, There Being No Valid Sale?

The transaction between Stein and the Board of Directors, therefore, construed by the rule laid down in *Butler vs. Thompson, supra*, is clearly not a *valid sale* so far as the \$2,113,000 of stock obtained by the bondholders is concerned. However it is equity that Stein and the men whom he represented, (that

is the bondholders,) shall be held to carry out the agreements they made with the company in the options and with these petitioners, and the sale of the properties to the company shall be held valid so far as the \$1,887,000 of stock is concerned and which the mill owners got.

Thompson on Corp., Sec. 462, Vol. I., and many English chancery cases cited in footnote.

Consequently the transaction between Stein and the Board being upheld as a *valid sale* so far as the \$1,887,000 of stock received by these petitioners and other mill owners are concerned; the enquiry now presents itself as to the relation that Stein, Untermeyer, Beard, Wolf and their associates hold to the Columbia Straw Paper Company as holders of both bonds and shares of capital stock.

It is certain that Stein and the bondholders could not, under the above circumstances, take these options on the mills for the purpose of organizing a corporation, and then organize a company to buy them at a price beyond that named in the option contract, and take without consideration all such profits, for the reason that the position of Stein, Untermeyer and their associates in this case with reference to the company, petitioners and mill owners, is very similar to the position of the promoters to the subscribers to stock in the case of *Brewster vs. Hatch*, 122 N. Y., p. 349, because of the fact that all that Stein had was options on the mills when he made his propositions to the Board of Directors, who knew all the circumstances. In fact Stein held the options only in trust for the petitioners, whereas the promoters in the *Brewster*

case held them absolutely as against the complaining subscribers to stock in that case.

In *Brewster vs. Hatch* the subscribers sued the promoters for damages. Our case is stronger in that the petitioners are here asking on behalf of the company that the promoters, the bondholders, shall pay into the treasury of the company the par value of the stock (\$2,113,000) that they have appropriated and have had the benefit of in order to give the company an opportunity to pay the \$1,000,000 that they claim the company owes them on the bonds and for, and by means of, which they desire practically to take all the company's property.

In so far as concerns these petitioners and the Company represented by them, these bondholders do not hold this \$2,113,000 as a *gift* because *the mortgagor-corporation could not give away its stock as against non-assenting stockholders, any more than as against creditors.*

Cook on Corporations (4th Ed.), Sec. 41.

Morawetz on Priv. Corp., Secs. 270, 286, 288.

At Sec. 286 Mr. Morawetz tersely states the rule:

"Every shareholder in a corporation is entitled to insist that every other shareholder shall contribute his ratable part of the company's capital for the common benefit." * * * "It would be a plain violation of the equitable rights of those shareholders who have contributed the amount of their shares in full, to allow any persons to have the benefits of membership, without adding the amounts of their shares to the company's capital."

In the case of *Clark vs. Bever*, 139 U. S. 96, this court held that as between consenting stockholders an original

issue of stock might be issued for less than its par value under the statutes of Iowa. But the court limited the rule by stating (p. 113), that they were not liable "unless it appears that they acquired the stock under circumstances that do not give creditors *and other stockholders* just ground for complaint."

What Does the Transaction Whereby Stein and His Principals Acquired the 21,130 Shares of Stock Amount To?

The transaction between Stein, Untermeyer and their associates and these petitioners is very similar to the facts presented in the case of *Morrow vs. Iron & Steel Co.*, 87 Tenn., p. 262. It amounted to this: They substantially subscribed for \$2,113,000 of stock, and instead of paying therefor, secured an agreement from the company, that they would, for \$1,000,000 advanced, be given fully paid up stock to the amount of \$2,113,000, and a lien or mortgage on the plant of the corporation, whereby it was to pay back the money they advanced.

On page 272 Judge Lurton in *Morrow vs. Iron & Steel Co.*, *supra*, says:

"Is a contract by which a corporation agrees to repay to the contributors of its capital stock their several contributions, and whereby such contributions are converted into corporate debts, valid even as against the corporation? Upon what consideration does such an agreement rest? *and what power has a corporation to bind itself by such a contract?*"

The mere suggestion that the effect of the scheme in the formation of the Columbia Straw Paper Company and the pretended sale by Stein to the corpora-

tion, is to make Stein, Untermeyer and their associates, who gave nothing for their stock, *secured creditors*, while these petitioners who gave their mills for stock and have paid for it in full, are but *general or deferred creditors*, conclusively proves its invalidity as far as these petitioners are concerned. Such a scheme throws all the risks and hazards of the business on these petitioners without their knowledge or consent; while Stein, Untermeyer and their associates would reap, without payment therefor, all possible gains and would be secured against loss in the event that the enterprise should prove unprofitable.

The scheme by which Stein, Untermeyer and their associates got this \$2,113,000 of stock without payment therefor except the \$1,000,000 they claim to have paid for the bonds, is condemned by what this court said in *Sawyer vs. Hoag*, 17 Wall., p. 610:

"It must be treated as an agreement between the corporation, by its officers, on the one hand, and the appellant (here bondholder) as a subscriber to the stock of the company on the other hand, to convert the debt which the latter owed to the company for his stock, into a debt for the loan of money, thereby extinguishing the stock debt."

To same effect is *Camden vs. Stuart*, 144 U. S., at page 114.

In *McCormick vs. Market Bank*, 165 U. S., p. 538, at page 550, this court say:

"When the corporation is created by a charter granted "by the legislature any person dealing with it is bound to "take notice of the forms of the charter and of the general "laws restricting the rights or defining the powers of the "corporation. (Citing authorities):

Sections 54 and 55 of an act concerning corporations approved April 7, 1875, of the State of New Jersey, and found in New Jersey, Revised Statutes 1875, Supplementary p. 20, in force at the time the Columbia Straw Paper Company was incorporated, are as follows:

"54. Nothing but money shall be considered as payment of any part of the capital stock of any company organized under this act, except as hereinafter provided for the purchase of property; and no loan of money shall be made to a stockholder or officer therein; and if any such loan shall be made to a stockholder or officer of the company the officers who shall make it, or who shall assent thereto, shall be jointly and severally liable, to the extent of such loan and interest, for all the debts of the company contracted before the repayment of the sum so loaned.

"55. The directors of any company incorporated under this act may purchase mines, manufactories, or other property necessary for their business, and issue stock *to the amount of the value thereof in payment* therefor, and the stock so issued shall be declared and taken to be full paid stock, and not liable to any further call, neither shall the holder thereof be liable for any further payments under any of the provisions of this act, and said stock shall have legibly stamped upon the face thereof the words, 'issued for property purchased'; in all statements and reports of the company to be published, this stock shall not be stated or reported as being issued for cash paid into the company, but shall be reported in this respect according to the fact."

Consequently these bondholders must be held to be bound to pay the par value of this stock under section 54, because there was *no valid* sale as far as this \$2,113,000 of stock is concerned for property under said section 55.

But this is the rule at common law as well as under the New Jersey Statutes. As promoters they were trustees for the company, and in equity are held to intend the necessary consequences of their acts in taking the stock, and that is to pay what that stock is worth. This value as an original issue is the par value. The Circuit Court of Appeals was in error in thinking of any lower value.

Thompson on Corporations, Vol. 1, Secs. 456, 457, 458 and authorities.

It is not necessary in order to make anyone a subscriber to capital stock that he formally subscribe on the books of the Company. The issuance of the stock to him without any consideration and his acceptance of the same are sufficient to make the holder of that stock a stockholder.

In *Upton, assignee, vs. Tribilcock*, 91 U. S., p. 44, on page 47, the Supreme Court say:

"The acceptance and holding of a certificate of shares in a corporation makes the holder liable to the responsibilities of a shareholder."

Morawetz on Corporations, Sec. 303.

Sanger vs. Upton, assignee, 91 U. S., 56, p. 60.

In *Lloyd vs. Preston*, 146 U. S., p. 630, affirming 36 Fed., 54, this Court held, that although it was true that the stock had been issued by the company in payment for the properties, yet the circumstances of the case were such as to show the sale was fraudulent as well as the overvaluation of property; that having taken the stock, Harper was liable for its *par value*; and that, as the evidence showed, the complainants had no

knowledge, they were not estopped from suing Harper on his *implied subscription* growing out of accepting and taking the stock under the form of a sale at an overvaluation.

This case presents all the questions arising out of the pretended sale by Stein to the company; there was the same "dummy" board of directors, under the complete control of Harper, pretending to buy property on behalf of the company at the price fixed by Harper, and issuing to him certificates of stock marked full paid and non-assessable as in this case.

Therefore as these bondholders are liable each to the Company as a holder of original stock, for the payment of the same; the amount to be paid is the *par value* of the same, and not the market value as thought by the Courts below.

In re Heppenheimer, 56 N. J. Eq. 240, (36 Atl. Rep., p. 966,) which grew out of this pretended sale by Stein to the Columbia Straw Paper Company, the chancellor held that a bill is good filed by the receiver against Heppenheimer, Untermyer and others as promoters of the Columbia Straw Paper Company, asking that the claims of the bondholders be reduced to the amount actually paid for the bonds, and that those bondholders accepting stock shall be held liable for such part of the par value as was not fairly paid for by the property.

SET-OFF.

We now have the Company indebted to each of these bondholders, represented by the respondents, for the million dollars, the amount of the bonds; and we also have these same identical bondholders, under the evidence, each

indebted to the Company for the *par value* of the capital stock that he holds as an original taken and implied subscriber aggregating \$2,113,000. Therefore under the decisions and equitable principles it seems the indebtedness set up in this suit ought to be set off one against the other under the averments of the answer of the petitioners; and had the Circuit Court not struck the cross-bill from the files, a decree should have been rendered against each bondholder for any balance he might owe on his stock over and above the amount due him on his bonds. In this case this affirmative relief would have amounted to over \$1,000,000 after paying the bonds in full.

Set-off is enforceable in equity where there are mutual debts and mutual credits, or where there exists some equitable consideration or agreement between the parties which would render it unjust not to allow set-off.

Gray vs. Rollo, 18 Wall., p. 629.

Wanzer vs. Truly, 17 Howard, p. 584.

Story's Eq. Juris., Secs. 1430 to 1445, (13th Ed.)

In this case the trustees represent a million dollars of bonds. The answer alleges, and the evidence establishes, that the holders of these bonds are indebted to the defendant company in \$2,113,000 for their unpaid subscriptions to the capital stock. If these are not mutual debts and credits which off-set each other, it is difficult to understand what are.

In the case of *Patterson vs. Linde*, 106 U. S., p. 519, on page 521, this court say:

"The liability of the stockholder to the creditor is through the corporation, not direct.

In the suit at bar, which was brought before *In re Heppenheimer, supra*, the corporation is a party. The Master finds there are no other creditors than the bondholders who are represented by their trustees; all the assets of the company are embraced in the mortgage. The evidence is conclusive that the only parties who have not paid for their stock in fact are the parties who hold the bonds. It is competent, therefore, for this Court—all necessary parties being before it,—to require these unpaid subscriptions to be paid into court, make a fund to pay the bonds, and in default thereof to declare the bonds invalid.

The courts of New Jersey have already declared equitable set-off to be the proper remedy in the case of *Hebberd vs. Southwestern, etc., Co.*, 56 N. J. Eq., 18; 36 (Atl. Rep., p. 122 (N. J.)) where bonds with a bonus of stock having been issued, the court held that as against the parties receiving the bonds, the liability on the stock could be off-set against the amount due on the bonds.

In *Goodwin vs. Keney*, 46 Conn., p. 563, which was a suit for foreclosure of mortgage against the owner of the equity of redemption, defendant for defense set up a demand she had against complainant, who was alleged to be insolvent. The court allowed the set-off, and complainant appealed.

The court on appeal say:

“We think the set-off properly allowed. Courts of equity in matters of set-off usually follow the law, but in many cases, where there is some intervening equity, they will allow a set-off, where a court of law would not. Is there such an equity in this case? It is a maxim of equity, and one of pretty general application, that he who seeks equity must himself do equity.

This maxim is applicable more especially to the party who applies to the court for relief. The petitioner (complainant) by thus applying has exposed himself to the full force of the maxim. By resisting the set-off he virtually says, 'Aid me in collecting my debt, and help me to resist the payment of a debt which I honestly owe.' This the court cannot consistently do."

"*Circuitus est evitandus*" is a rule always favored in equity, and to prevent circuity of action, a court of equity often entertains jurisdiction *upon this ground alone*; and to avoid it, cross demands are allowed to be set-off against each other.

It is also another maxim, that, "he who seeks equity must do equity."

In the case at bar, the bondholders are before the court by their trustees, the respondents, and should be made by this court to do equity when seeking its aid in the collection of their alleged debts.

When the courts of this land shall strike through and brush aside all the forms and subterfuges by which original issue of stock is gotten out of the treasury of a corporation, and declare that the organizers or promoters must pay in money the par value of the stock they have obtained *by means of the form of a sale at a fraudulent valuation*, then will cease the organization of large corporations with large issues of "watered" stock. The courts will do that which both the States and the federal government by enactment of laws, have been as yet unable to do. Every corporation of small or large capital will then have in its treasury a dollar in money for every dollar in stock that is issued. Then legal treatises on cor-

porations will not state that the investing public expect to be deceived as to the values of the shares of stock in which they attempt to make permanent investments.

Cook on Corporations, Section 46, page 118, Vol. 1 (4th Ed.) says:

"There is no more harm in the issue of stock below par than there is in the issue of a note or bond below par. The extent to which the courts have gone in sustaining such issues of stock for property is shown by the fact that even constitutional and statutory prohibitions against 'watered' stock have been practically construed away by the courts. Moreover, the laws of trade are more powerful than the laws of men, and in business circles it has become customary to capitalize property at a reasonably high figure. This is due to the fact that it is easier to sell stock at less than par than at par and also to the fact that, by a large capitalization, *dividends are kept low enough to avoid the cupidity of possible competitors and the interference of legislatures.*"

The latest declarations of this court do not seem to be in accord with the doctrine just quoted from Cook. In the case of *Smyth vs. Ames*, 169 U. S., p. 466, on page 546, this court say:

"We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute,

and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property.

What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to, demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

It is true that this was said as applied to a common carrier, but why should not it apply equally to an industrial organization? If a railroad company should not be entitled to secure a return on capital not invested by means of watered stock, does not public policy require that such an industrial organization should be limited to a fair return on the capital invested.

Any method that will tend to limit the capitalization of the great industrial combines of the present to an amount equal to the actual capital paid into the treasury and the fair cash value of the property taken over, we submit, should receive the sanction of the courts; one of the surest methods to attain this end is to compel the original takers to pay for their stock in full, at its par value. If the promoters realize that the corporation must have an actual capital equal to the face of its stocks and bonds, there will not be the over-capitalization of to-day. The consumer will not be robbed, and labor will not receive one reward while capital is being paid two or three times over.

Conceding for the sake of the argument, although we

do not admit it, that the bondholders here should not be compelled to pay for the stock which they say went as a *bonus* with the bonds, namely, \$600,000, nor for the \$333,000 which was placed in the hands of Wolf as trustee on the order of the organizers of the corporation, and then make an allowance for service in the organization of the corporation on the basis which it is claimed was made to Sherwood for his services, namely, \$25,000; it still appears that the bondholders in this case are the holders of over a million dollars of the capital stock of the Columbia Straw Paper Company, which they took from its treasury without paying a dollar therefor.

But our contention is that the bondholders owe the corporation \$2,113,000.

We very respectfully submit that the decrees of the Circuit Court and the Circuit Court of Appeals should be reversed, and the cause remanded, with instructions to re-instate the cross-bill; and upon application of appellants, to refer the issues made by the cross-bill and answers to the Master, and at such hearing an accounting be had on the respective indebtedness of each bondholder to and from the Company by reason of stock and bonds, and that the one indebtedness be off-set against the other, and that a decree be rendered for the payment of the balance; and for such other and further decrees as this court may direct; and for such further proceedings as may be found necessary to do full and complete equity by this court.

OTTO GRESHAM,

Solicitor for Appellants.

JOHN S. COOPER,

Of Counsel.

IN THE DISTRICT COURT OF THE UNITED STATES
OF THE DISTRICT OF COLUMBIA
JANUARY TERM, A. D. 1904.

Case No. 15,444. Term No. 1.

FRANK W. DICKMAN, Trustee
of the National National Bank of
Washington, D. C.

vs.
The Northern Trust Company
and Otto B. Jansson.

THE NORTHERN TRUST COMPANY
and OTTO B. JANSSEN,
Respondents.

BRIEF IN REPLY FOR PETITIONERS TO
AMENDED BRIEF FOR RESPONDENTS.

Otto Gassman,

Solicitor for Respondents.

JOHN S. CHAPIN,
Of Counsel.



—IN THE—
Supreme Court of the United States.

OCTOBER TERM, A. D. 1898.

Case No. 16,724. Term No. 196.

HARRY W. DICKERMAN, Trustee
of the Second National Bank of
Rockford, Illinois, et al.,

Petitioners,

VS.

THE NORTHERN TRUST COMPANY
AND OVID B. JAMESON,

Respondents.

On Writ of Certiorari to
the United States Cir-
cuit Court of Appeals
for the Seventh Cir-
cuit.

BRIEF IN REPLY FOR PETITIONERS TO
AMENDED BRIEF FOR RESPONDENTS.

The brief for respondents practically ignores the provisions of the option contracts (Rec., p. 503), which embody the only contract between the petitioners and promoting bondholders once represented by Emanuel Stein, and now represented by the Trustees in the mortgage sought to be foreclosed, respondents herein.

The following propositions of respondents' brief are fully answered by the option contracts between the petitioners and the promoters:

(1) That no rights of creditors are involved in this suit. (Brief No. IV, p. 55.)

(2) That defendant corporation could not maintain an action or defense such as was set up by appellants. (No. VI, p. 77.)

(3) That petitioners cannot maintain such defense or such action. (No. VII, p. 91.)

(4) That there was no fraudulent over-valuation. (No. V, p. 56.)

(5) That no fraud, concealment or deceit was practiced upon the petitioners. (No. X, p. 116.)

(6) That the petitioners participated and acquiesced in the issue of the \$2,113,000 of stock. (No. VIII, p. 92.)

(7) That petitioners were not stockholders at the time of the conveyance of the property for the stock. (No. IX, p. 107.)

That no rights of creditors are involved in this suit.

(No. IV, p. 55.)

This is true, and yet the rights of a non-assenting stockholder who has paid par for his stock, are as well protected in a court of equity against stockholders who receive stock for less than par as are the rights of creditors.

In the case of *Burke vs. Smith*, 16 Wall., 390, at page 397, Mr. Justice Strong, in delivering the opinion of the court, says:

"Conditions attached to subscriptions, which, if valid, lessen the capital of the company, thus depriving the State of the security it exacted that the railroad would be built, and diminishing the means intended for the protection of creditors, are therefore a fraud upon the grantor of the franchise, and upon those who may become creditors of the corporation. *They are also a fraud upon unconditional stockholders who subscribed to the stock in the faith that capital sufficient would be obtained to complete the projected work, and who may be compelled to pay their subscriptions, though the enterprise has failed, and their whole investment has been lost.* It is for these reasons that such conditions are denied any effect."

In *Morgan vs. Struthers*, 131 U. S., 246, on page 254, it is said:

"We have read with care all the authorities cited by counsel for defendant in error to support the claim that the contract in question is, in the eye of the law, fraudulent and void. Those which relate to contracts connected with subscriptions of stock are simply illustrative, in different forms, of a doctrine settled in a great number and variety of decisions, that a corporation has no legal capacity to release an original subscriber to its capital stock from payment of it, in

whole or in part; and that any arrangement with him by which the company, its creditors or stockholders, shall lose any part of that subscription, is *ultra vires* and a fraud upon creditors and the co-subscribers. *Burke vs. Smith*, 16 Wall, 390, 395; *Bedford R. R. Co. vs. Bowser*, 48 Penn. St., 29; *Green Brices Ultra Vires*. This doctrine rests upon the principle that the stock subscribed, both paid and unpaid, is the capital of the company, and its means of carrying out the object for which it was chartered and organized. All these cases fall within this principle. In each of them the agreement declared void, had it been carried out, would have diminished the common fund, which is a trust fund for the benefit of the general creditors of the corporation, the stockholders, and all others having an interest therein, and could have been violative of the terms upon which the subscriptions had been expressly made, and under which the trust originated. *The corporation would have been damaged in its capital by the loss of the subscriptions, and the co-subscribers would have been damaged by the lessening of their common trust fund.*"

In *Potts vs. Wallace*, 146 U. S., 689, on page 704, Mr. Justice Shiras said:

In *Burke vs. Smith*, 16 Wall, 390, 394, it was said, per Strong, J.: "It has been settled by very numerous decisions that the directors of a company are incompetent to release an original subscriber to its capital stock, or to make any arrangement with him by which the company, its creditors or the state shall lose the benefit of his subscription. Every such arrangement is regarded in equity not merely as *ultra vires*, but a fraud upon other stockholders, upon the public, and the creditors of the company."

In *Sturges vs. Stetson*, 1 Biss 246 (23 Fed. Cas., 311) Mr. Justice McLean held, that the directors of a company have no power to receive subscriptions of stock at a less

price per share than is fixed in the charter. That such a subscription would be not only in express violation of the charter, but a *fraud upon prior stockholders*. That such act of the directors would be no less a fraud if done *innocently*.

In *Fosdick vs. Sturges*, 1 Biss., 255 (9 Fed. Cases, 501), Mr. Justice McLean holds that prior stockholders who paid par have the right to complain of subsequent issues at less than par, and refers to *Sturges vs. Stetson*, *supra*.

In *Higgins vs. Lansingh*, 154 Ill., 301 (cited by respondents), the court fully recognizes this principle.

At page 331 that court said:

"Had there been, at the time, *other stockholders* who had paid for their stock, or creditors who had been injured by the transaction, and not consenting thereto, then, as to them, counsel's argument would be unanswerable."

Again on page 336:

"It is not, of course, decided that such a disposition of these certificates as was made to Benson, Blaney and Sherman would have been valid as to others subscribing and paying for stock at par, without notice of and not consenting to such disposition. Different principles control the decisions of such cases."

In No. XI at page 122 of their brief, respondents state the remarkable proposition that New Jersey is the only forum in which the liability of the stockholders of the Columbia Straw Paper Company can be enforced.

Admitting that in a proceeding *by a creditor* against a stockholder of a New Jersey corporation on an unpaid stock subscription, the court must have before it all the stockholders and all the creditors, including the corporation;

such a rule can have no application where the corporation is simply collecting from the stockholder the amount he has agreed to pay to the corporation *on his subscription* to the capital stock. The liability of each stockholder in such a case is several and not joint, and not even dependent upon there being creditors of the corporation in existence.

The corporation, we submit, may sue one or more stockholders on the unpaid balance of stock subscription in any jurisdiction in which it may secure service, or in which the stockholder will voluntarily appear; and in such an action the stockholder cannot set up that the corporation, at the time he subscribed, agreed not to call on him for the full face value of the stock, unless at the same time the stockholder can show that the corporation made that agreement with *every other stockholder* in the corporation.

Morawetz on Corporations, Secs. 302 to 315, inclusive, and authorities cited in foot notes.

An agreement to release one stockholder and not another is no more binding on the corporation than is the agreement of the corporation to release all the stockholders against the creditors. The stockholder who has paid par for his stock is entitled to ask that the corporation compel the other stockholders to do likewise and the corporation may do this in any jurisdiction in which service may be had, or the stockholder voluntarily appears.

If the liability of a stockholder can be enforced in Illinois, it then follows that the corporation should be allowed to set off such a liability when the Illinois stockholder seeks to foreclose a mortgage on property of the New Jersey corporation situated in Illinois; and in addition to setting off what may be sufficient to defeat the foreclosure, the corporation shall

also be allowed in the same suit by cross-bill to compel the stockholder, who brought the foreclosure, to pay up all he owes to the corporation by reason of his subscription to the capital stock of the company, although there may be other stockholders in other States who are in arrears to the corporation on their stock subscription. Upon the Illinois stockholder paying his subscription in full, he then can compel the corporation, if derelict, to proceed against the other stockholders, whether in New Jersey or in any other State.

Although a suit by a creditor against part of the stockholders, the case of *Hatch vs. Dana*, 101 U. S., 205, establishes the principle for which we contend, and which is controlling here.

Morawetz on Corp., Sec. 315.

II.

That the defendant corporation could not maintain an action or defense such as was set up by appellants.
(No. VI, p. 77.)

The agreement in the options by the petitioners to accept from the company the stock was a subscription upon their part, and made them stockholders and interested in the corporation the very instant the options were accepted by the company or by the vendees in the options (Stein), *on behalf of the company*. The corporation being bound by the acceptance of the options to deliver the purchase-money stock, the petitioners, in turn, were governed by the provisions of the options, and were bound to accept such stock in purchase of their plants; and immediately upon its formation and acceptance of the options through Stein, assignee, it became its duty to protect the petitioners

and other mill owners becoming interested in the stock of the company by virtue of the options. In rendering that protection it became its duty, by means of its board of directors, to insist upon Stein and the other promoters allowing the \$2,113,000 of stock to remain in the treasury to purchase the other thirty-one mills under the options; or, if Stein and the promoters took it out, to insist that they paid its full par value as subscribers, equally as petitioners did with their mill plants, so that the company would then have the money in place of the stock to purchase the other mills. In this manner only could the company protect the petitioners from the wrongful acts of Stein and his co-promoters, and also protect itself from being robbed of its funds without any consideration, and also prevent the provisions of the options from being violated.

III.

That petitioners can not maintain such defense or such action. (No. VII. p. 91.)

It follows from what has been said above in reference to the rights of the corporation itself to maintain the defense under the answer and the action under the cross-bill, that these petitioners, as minority stockholders, have the same rights when the corporation itself is in the control of the promoters.

IV.

That there was no fraudulent overvaluation. (No. V. p. 56.)

The argument of the respondents is met by the fact that the options provide that \$4,000,000 of stock was to pay for mills to be acquired. The evidence shows the number to be seventy. The options also show that these mills were either to be taken direct by the company at the prices named in the options, or else the vendees in the options were to turn them over at the same prices. The plain meaning of the provisions of the options is borne out by the sworn answer of Ramadell on page 207, lines 44 to 47 of the Record. Consequently, in the formation of the Columbia Straw Paper Company, there was no necessity, nor was it a question at all of putting a value upon the property by the directors. *That had been done by the options themselves and acceptance thereof by the corporation, through Stein, assignee.* There was no intention of any valuation, otherwise than as disclosed by and agreed to in the options.

V.

That no fraud, concealment or deceit was practiced upon the petitioners. (No. X. p. 116.)

If there is any one thing that is fully revealed by the evidence in connection with the options, it is that the petitioners on the one hand and the promoters on the other, fully agreed in writing as to the manner in which the corporation should be organized. The evidence shows that no agreements otherwise were made *subsequent* to the acceptance of the options by the company through Stein. There

is not a single thing lacking in the options to enable honest business men to fully incorporate and carry out the intentions of both parties. The recitals of the options show that the promoters on the one hand wished to organize a corporation to buy the mills from the petitioners, and that such organization was dependent on the milling-plants giving the options (Rec., p. 503), and that it was the desire of the petitioners, on the other hand, to sell their mills to such corporation, *and not to the promoters themselves*. The options then state that "in consideration of the foregoing recitals" certain agreements are made. These agreements are set out in eleven different sections. The 3rd, 5th, 6th, 7th, 8th, 9th and 10th all show conclusively that it was the intention of all parties that the new corporation or corporations should receive title to the mill-plants at the *exact* amounts of the options. The options further show that no provision is made in the options at all for any sale of bonds with a stock bonus. There is no provision for any proposition by the promoters, or Stein, to be made to the company for a sale to the corporation at *any* price. Hence, we say there is nothing in the options themselves to put the petitioners or the mill owners on their guard against any treachery or deceit on the part of the promoters; or to give them any reason to anticipate any different procedure than disclosed by the options.

Section 10 of the options provides that the expense of organizing the corporation to take over the mills was to be borne by the parties of the second part; that is, by Beard and Ramsdell, or Stein, their assignee, and the parties for whom he acted; and hence the petitioners had no reason to anticipate that the promoters would claim the \$2,-

113,000 of stock for fees and expenses of promoting the corporation.

VI.

That the petitioners participated and acquiesced in the issue of the \$2,113,000 stock. (No. VIII. p. 92.)

It can not be said that the records of the corporation show that at any meeting of the stockholders, the minority stockholders, agreed that Stein and his associates should take the surplus stock. The petitioners made repeated efforts to get in evidence the records of the corporation. They were willing whatever adverse evidence the records contained might be admitted. Sherwood testifies that there was no meeting of the stockholders in Chicago, where the mill owners received their stock through Wolf. Wolf, Stein and Trebein cautioned Sherwood not to disclose to the mill owners anything that he might know about the organization of the corporation and the distribution of its securities, and Sherwood, himself, testifies that he never knew until the bill was filed how many of the mills actually were taken over, although he and the petitioners, as was represented to them, believed, until then, the number had been 70.

The only witness who undertook to testify on behalf of the promoters that the minority stockholders knew that the surplus stock was to go to the promoters is Henry M. Wolf. Mr. Wolf instead of testifying to facts merely testified to this belief. He says he believes the mill owners knew that the 2,113,000 of stock was to go to the promoters and yet he admits that he did not know the amount of the surplus stock, and how and to whom it was to be

distributed, at the time he delivered to the mill men their securities.

Mr. Wolf's belief is not enough to overcome the positive recitals in the contract and the direct testimony for the petitioners.

In *Ogilvie vs. Knox Ins. Co.*, 22 Howard, 280, page 390; this court said:

"Those who seek to set aside their solemn written contracts by proving loose conversations should be held to make out a very clear case."

On pages 455 and 456 of the Record is Mr. Wolf's testimony on this point. It is as follows:

Q. Now would the two hundred thousand of preferred and the four hundred thousand of common stock, together with the stock that the mill men were to get, would that consume the entire issue of stock of the corporation, which was four million dollars, if you know?

A. You mean that assuming that your figures are correct, would it take all the stock?

Q. Yes, sir.

A. How much do you assume has gone to the mill owners?

Q. I am not assuming anything that you know.

A. I know now there was some surplus stock; just what the amount is I have not in mind; at that time I do not really know whether I knew that or not; my impression is I did not. I did not know anything about the distribution of the stock.

Q. Then the mill owners did not understand what was to be done with it, did they?

A. I do not know what they knew; I had nothing to do with that; my impression is that they did know, but

whether they knew accurately or not, the figures, I do not know. I know that some of them did know.

Q. Now do I understand you to say that the mill owners, instead of the agreed price, who took the bonds, would have with each bond twenty shares of preferred and forty shares of common stock?

A. You ask me whether the mill owners understood that?

Q. Yes, sir.

A. Every one of them, unquestionably.

Q. And they assented to that, and agreed to it at that meeting?

A. I do not say that. I do not say that that question came up at that meeting.

Q. But you do not know whether they knew what was to become of the balance of the preferred and common stock?

A. I say that my impression is that most of them knew, if not all of them, in fact I am morally certain that they all knew.

Q. Now, how do you know, Mr. Wolf, that they knew what was to become of the balance of this stock when you did not know yourself?

A. I said I did not know what the surplus was; I did not know the figures, but I knew in a general sort of way probably at that time. I knew these men who were doing this work and spending all this money, and spending this money for traveling expenses and counsel fees, and devoting a good deal of time, were not doing it for nothing; every mill man knew it; every mill man knew that the bonds were being sold, together with the stock, in the way that I have stated, because I *believe* every mill man was asked to take bonds. Some of them did so, as I have tes-

tified. Mr. Brown, of Elmwood, received ten thousand dollars cash, and took fifteen thousand of bonds. Mr. Carroll, Mr. Hooker also took bonds, and these things were all talked of, they were in the air, and every one knew them in a general way.

There is no evidence therefore from which it can be said that the petitioners knew or acquiesced in the issuance of the \$2,113,000 of stock to Stein and his associates, and no record was introduced of the proceedings of the stockholders wherein such action was ratified.

On page 575, of the record, the Court of Appeals said, in its opinion:

"Assuming that the stock of the new company was of par value, and that the plants were worth only the prices fixed upon them in the several options, of course there would appear to be an over-valuation in the sale. But this is an assumption that would scarcely be warranted. Probably there was not much market value for the stock, especially the common and unpreferred stock. It was supposed that the new enterprise would make the plants more valuable, so that the value of any plant before the transfer would not be evidence of its value after the consolidation should be completed."

As to the suggestion of the Court of Appeals that probably there was not much market value for the stock, in view of the New Jersey statute, which provides that stock shall only be issued for cash or in exchange for property at its fair cash value, we call the court's attention to the language of Mr. Justice McLean in *Sturges vs. Stetson*, 1 Biss., 246, at page 249, *supra*.

"The plea sufficiently shows that there was no sale of stock to the plaintiff, which had been previously issued, but an attempt to create the stock and sell it

at the same time, as one transaction; and it appears that the discount of nearly one-third of the shares purchased was a part of the contract of subscription; and this presents the great question in the case, whether the directors had power to issue the stock for less than its par value.

"If it is not admitted in the argument, it is not controverted, that the commissioners who, before the organization of the company, received subscriptions of shares, had no power to receive them for less than the amount stated in the charter. But it is said that the subscription of the plaintiff was not received by the commissioners, but by the board of directors, who exercised all the powers of the corporation; and among others, the power of sale over its property; that the sixth section of the charter gives them express power over the stock, 'to determine the time and terms of payment.' "

"As capital stock is not property until it shall be subscribed for, the power given to the directors in the charter to sell the property of the company does not apply to the disposition of capital stock; and it seems to be clear that the power to determine the time and terms of payment of subscriptions of stock, can have no reference *to its price*. The charter declares the shares of the capital stock shall each be fifty dollars; and it would be contrary to all known rules of construction to say that a provision that applies only to the payment of stock subscribed shall be so construed as to repeal the provision that fixes the value of each share.

"In declaring that the capital stock should be divided into shares of \$50 each, the law was designed to give the same permanency to the limitation of the shares, as to the limitation of the capital stock. A subscription procured of 15,000 shares, amounting to the sum of \$750,000, with the understanding that it should be discharged on the payment of about one-third less, was a fraud upon the law and upon the stockholders. The term fraud is here used in no other sense than as an act done without

the authority of law, and against the provisions of the charter, and this epithet legally applies, however innocently the act may have been done by the directors."

The right of Stein and the promoters to take the surplus stock is placed by counsel for the respondents, in their brief at page 103, on an entirely different and inconsistent ground from that taken by the Court of Appeals. They admit that the plants were to be transferred to the corporation at the option prices, but their claim is that because Stein and the promoters, according to the option contracts, were to organize the corporation, secure the options at their own expense, that it *must* have been contemplated that they were to be reimbursed for their labor and their outlays. Therefore they say, that the promoters were entitled to take, on a *quantum meruit*, as it were, all the stock that was not absorbed in acquiring the mills for their services. This is a concession that there was only the one contract, and that contract was embodied in the options. We submit that if it be conceded that the promoters were entitled to compensation, the party paying the same—the Columbia Straw Paper Company, and through it these petitioners—should be allowed to pass upon the amount to be paid; and further, that the \$2,113,000 of stock at par taken, was and is exorbitant and beyond all bounds of reason. Even deduct the \$600,000 stock as bonus and it leaves \$1,513,000, which also is at least a million over what they would be entitled to on a *quantum meruit*.

Respondents also claim that the number of mills to be taken over was left to the discretion of the promoters; that is to say, the respondents claim that under the option contract the promoters could have decided to have taken over

thirty-nine or any less number of mills, down to even one mill, and have taken balance of capital stock at par for their services. This can not be.

VIII.

That petitioners were not stockholders at the time of the conveyance of the property for stock. (No. IX, p. 107.)

Respondents insist that the incorporators and directors holding only eighteen shares of stock actually issued out of 40,000 shares, the total capital stock of the company, were the only THEN stockholders at the time of the directors making the alleged purchase of Stein under the options.

This proposition fails when it is considered that at the very time of making his proposition to sell the thirty-nine mills, Stein had the thirty-nine options before the board. All the *property* he had in the mill-plants was these options. He and the Board of Directors knew that every one of these options showed on its face that these petitioners and other mill owners were agreeing to sell to the corporation to be organized their mills under the terms of the options, *and not otherwise*. That under the terms of these options they were to become stockholders *direct* from the company. (Rec., p. 509.) The wording is:

"The shares of stock to be issued unto the company in payment for the property and effect of the covenants to be entered into by it, shall be duly allotted to the company by resolution of the corporation so to be organized at the time of the passage of the necessary resolutions authorizing the purchase of the property of the company, and the shares of stock shall be delivered as soon thereafter as the same can be printed and ready for delivery."

In fact, in law, and in the eyes of equity, these petitioners were stockholders *before* Stein had obtained any interest in the options, by assignment from Beard and Ramsdell, original parties of the second part to the options. The *very existence of this corporation* was dependent upon these petitioners agreeing to become stockholders, and it did not obtain its birth until they had agreed in the options to become such stockholders, and such options had been accepted by Stein, assignee, *on behalf of the corporation*, so as to bind them by their agreements to take its stock in part payment of purchase money.

TRUST DEFENSE NOT ABANDONED.

In No. III at page 38, the respondents claim that the court allowed the answer of the petitioners to be amended in order to present the "TRUST" defense; and that the evidence fails to show that the organization of defendant company, and the execution of the bonds and mortgage, were in pursuance of a scheme to organize a trust.

The record at page 234 shows that the court decided that the motion of the defendants, Harry W. Dickerman *et al.*, to amend their answer heretofore filed herein, be and the same is hereby denied. Prior to that time the record shows that Dickerman's motion for leave to amend was accompanied by the amendments which he proposed to incorporate in his answer, provided he was allowed to amend it.

The Circuit Court allowed the proposed amendments of Dickerman to the answer to be filed merely that a record might be made of the questions desired to be raised.

That part of Judge Showalter's oral opinion (the opinion is not in the record) which counsel for the respondents put in their brief, beginning on page 38, gives his reasons for refusing to allow the answer to be amended.

He says there was no trust, could not have been one, and no intention to form one. The failure to form the trust is the cause of Dickerman and the minority stockholders complaint. They complain because it was promised 70 mills, the entire number, were to be taken in, while, as a matter of fact, only 39 were acquired, and the 31 on the outside proceeded to cut prices.

In this his Honor was in error. The 31 were not at first taken over or acquired by the Columbia Straw Paper Company, but they were reduced to its control. In the sworn answers to the cross-bill it is asserted by Samuel Untermyer and all others that *before* the Columbia Straw Paper Company was formed, and while the scheme was suggested, it was represented to them—

“That the then yearly consumption in the country of the produce manufactured by the mills was ninety thousand tons, and was increasing at the rate of about ten thousand tons per annum; that the mills from their location, their proximity to the straw-producing regions, and the consequent cheapness of manufacture, *would control most of the market, at least ninety-seven per cent. thereof*; that they probably could sell ninety thousand tons per annum; that the paper had been manufactured at \$18.00 per ton by corporations, and that in this price was reckoned all the salaries of officers; that by saving in salaries, economy in railroad transportation and buying to advantage, the cost price could be reduced to about \$16.00 per ton; that the average selling price for nine years had been \$26.83 per ton; that for 1891 the selling price was \$30.00 per ton; that even calling the cost of production \$18.00, and the selling price \$26.00, the profits

upon ninety thousand tons would be \$720,000 per annum; that this would provide a sinking fund of \$110,000 per annum, and pay \$60,000 interest upon \$1,000,000 of bonds, \$80,000 upon \$1,000,000 preferred stock, and leave \$470,000 to apply on \$3,000,000 of common stock, which would be upwards of fifteen and a half per cent.; that should the sales be but sixty thousand tons yearly, and the selling price but \$26 per ton, still the amount of profit would be \$480,000 per annum, which would put into the sinking fund \$110,000 per annum, pay six per cent. on a million dollars bonds, eight per cent. on \$1,000,000 preferred, and more than six per cent. on \$3,000,000 common stock."

(Rec., pp. 132, 183.)

This was too much for the cupidity and avarice of our promoting friends. Instead of taking over all the mills, they decided the Columbia Straw Paper Company should take over but 39, they appropriate the stock provided for the other 31, and these 31 mills should be controlled and their product sold by a corporation called the Paper Commission Company to be organized by them, as it subsequently was. (Rec., pp. 360, 410, 418.)

The Paper Commission Company was organized under the laws of the State of New Jersey to sell the product of the Columbia Straw Paper Company and the outside mills. (Rep., pp. 120, 360.) One of the directors was Anthony Trentman, the owner of the Hartford City, Indiana, mill, *on which an option* had been given to Beard and Ramsdell. (Rec., pp. 417, 388.)

As a matter of fact as complete a "trust" was formed as if every mill had been originally acquired by the Columbia Straw Paper Company.

OTTO GRESHAM,

Solicitor for Petitioners.

JOHN S. COOPER,

Of Counsel.





N^o. 33.

Petition for Rehearing.

Supreme Court of the United States,

OCTOBER TERM, A. D., 1899.

Case No. 16,724.

Term No. 33.

HARRY W. DICKERMAN, *Trustee, et al.*,

vs.

THE NORTHERN TRUST COMPANY, *et al.*

} On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

PETITION FOR REHEARING.

JOHN S. COOPER,
Of Counsel.

OTTO GRESHAM,
Solicitor for Appellants



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D., 1899.

CASE NO. 16,724.

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vs.

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) States Circuit Court
) of Appeals for the
) Seventh Circuit.

PETITION FOR REHEARING.

Harry W. Dickerman, Trustee for the Second National Bank of Rockford, Illinois; F. J. Diem; E. P. Hooker, Trustee for the Merchants' National Bank of Defiance, Ohio, and in his own behalf, and James C. Richardson, appellants in this cause, respectfully present their petition for a rehearing, and submit the following reasons why their prayer should be granted.

I.

As to whether there was fraud in the organization of the defendant company, this court differs from both the Circuit Court and the Circuit Court of Appeals. It finds there was fraud. It indicates that when the bonds are presented for redemption from the proceeds of sale, an inquiry may be made as to their validity; also that "it is not disposed to condone the offences of those" who committed the fraud. But it does not pass on the first error assigned, discussed on the argument and in appellants' brief from pages 77 to 85, and considered at length in the opinion of the Court of Appeals, (Rec. 578-80), namely, that it was an error for the Circuit Court to strike appellants' cross bill from the files.

II.

A.

The cross bill makes the promoters and their associates, the parties claimed to be fraudulent holders of bonds, parties to the suit. If under the answer an attack can be made upon the bonds only as an entirety, perhaps under the cross bill a distinction may be made between what bonds were obtained by fraud, and what bonds are in the hands of innocent holders, if any. It was drafted with reference to the case of *Thomas v. Brownsville, etc. R. R. Co.*, 109 U. S. 522, and *Koehler v. Black River Iron Falls Co.*, 2 Black 715, which hold that a stockholder may be permitted to come in and defend against the foreclosure of a mortgage where the corporation acquiesced in the foreclosure. It is open neither to the objection in *Bronson v. R. R. Co.*, 2 Black 524, p. 532, that it was filed too late; nor to the one in *Thomas v. Brownsville R. R. Co.*, *supra*, that the stockholders who were resisting the foreclosure did not offer to do equity.

While the rule seems to be as declared in *Thomas v. Brownsville R. R. Co.*, *supra*; *Drury v. Cross*, 7 Wall. 299, and *James v. R. R. Co.*, 6 Wall. 752, that the mortgage will be preserved for the purpose of securing the amount bona fide invested in the property; the court ignored it in the case of *Koehler v. Black River Falls Iron Co.*, 2 Black 715, and held the mortgage void at the instance of a stockholder, although the company was acquiescing in the foreclosure.

The cross bill alleges that after options were obtained and before the corporation was organized, the plan was formed whereby the \$2,113,000 of excess stock was to be distributed after the corporation was organized. That to this end, the \$800,000 was subscribed by the parties named in the cross bill as bondholders, who made Untermyer, Beard, Wolf and others, their agents to distribute the money to the mill owners, make the cash payments pursuant to the options, and receive for them the bonds and stock; and that the parties so named took the bonds with notice of all the transactions whereby Beard and Untermyer got both the bonds and stock out of the treasury of the corporation. Stein's testimony shows this, and since the opinion in this case was rendered, the "underwriting agreement," the existence of

which Stein denied in his testimony, (Rec. p. 313), and Sherwood asserted, (Rec. pp. 345-6,) has been seen in the city of Chicago.

Does a party who underwrites a fund for the purpose of organizing a corporation, stand in the same attitude as a party who buys bonds with stock thrown in as a bonus of a "going concern"?

Industrial organizations such as the one disclosed by this record, are formed by two parties, one putting in property, the other cash. But the history of such organizations is, although the rights of the public may be disregarded, that they are organized on a basis that is equitable as between the parties who put in the property and the cash. Here this court finds that the parties who put up cash gave the mill owners stock which was worth only half of what the mill owners expected, and had reason to expect it would be worth; caused by the fact that the parties who put in the cash and controlled the organization of the company, took stock out of the treasury of the company, against which property was to be placed.

The validity of the stock in the hands of the promoting bondholders against the corporation and the other stockholders all depends on the pretended sale of the mills by Stein under the options to the corporation. The contention that it is fully paid up stock is disposed of by what this court said in *Drury v. Cross*, 7 Wall. 299, on page 304 :

"It is claimed that the sale at the Milwaukee Exchange, assented to by the corporation, conferred rights on the purchasers of the bonds which cannot be successfully attacked; but this claim is based on the idea that the sale was for an honest purpose, when, in fact, it was only a part of a previously concerted plan to accomplish a fraudulent purpose."

It is true that *Drury* was a judgment creditor who had unsuccessfully attempted in the Circuit Court by original bill to reach assets of a railroad corporation in the hands of a purchaser at a sale under the foreclosure of a mortgage made by the corporation. Here the sale was set aside by this Court on appeal. In the light of *Koehler v. Black River Falls Iron Co.*, 2 Black 715, as this court was then constituted, can it be questioned if a stockholder of the Milwaukee & Superior R. R. Co. *prior* to the foreclosure and sale had asked to be made a party to the suit for the

purpose of setting up as a defense against the foreclosure the facts alleged by Drury to set it aside, that he would have been denied that privilege?

B.

A stockholder who pays par for his stock is as well protected in a court of equity against a stockholder who receives stock for less than par, as is a creditor.

Burke *v.* Smith, 19 Wall. 390.

Morgan *v.* Struthers, 131 U. S. 246.

Potts *v.* Wallace, 146 U. S. 689.

Sturges *v.* Stetson, 1 Biss. 246.

Fosdick *v.* Stetson, 1 Biss. 255.

It is only where the same contract is made with *all* the stockholders, that it is binding on the corporation and each individual stockholder. This principle controlled in the case of *Scoville v. Thayer*, 105 U. S. 143, for on page 153 it is stated that "the same contract was made with *all* the other shareholders, and the fact was known to *all*," etc., but a different rule obtains where, as is found here, complaining stockholders were ignorant of the methods by which (through the form of a sale) the \$2,113,000 was gotten out of the treasury of the corporation, and especially as they had been led to believe this stock would be used in acquiring mills.

The reason of the rule is stated by this Court in *Burke v. Smith*, 16 Wall. 390, on page 397, as follows:

"They (the conditions) are also a fraud upon unconditional stockholders, who subscribed to the stock in the faith that capital sufficient would be obtained to complete the projected work, and who may be compelled to pay their subscriptions, though the enterprise has failed, and their whole investment has been lost."

Just what may happen here to the mill owners if the decree of the Circuit Court is allowed to stand.

The contract of purchase between Stein and the corporation that the stock certificates should bear on their face the words "fully paid and non-assessable," ought not to estop either the corporation, at the time of issue under the control of the promoters and their associates who were really trustees for it, or the

mill owners who had signed the option contracts, and for whom the promoters were equally trustees, from asking that the promoters make good the liability they incurred by the acceptance and retention of the stock certificates. Neither can such a recital in the certificates stop the non-assenting stock holders from compelling the derelict corporation to enforce this liability.

This proposition has been declared by this Court in *Upton, Assignee, v. Tribilcock*, 91 U. S. 45, on page 48:

"The legal effect of this instrument was to make the remaining eighty per cent payable upon the demand of the company. We see no qualification of this result in the word "non-assessable," assuming it to be incorporated into and to form a part of the contract. It is quite extravagant to allege that the word operates as a waiver of the obligation created by the acceptance and holding of a certificate to pay the amount due upon his shares. A promise to take shares of stock imports a promise to pay for them. The same effect results from an acceptance and holding of a certificate. *Palmer v. Lawrence*, 3 Sand. S. C. 761; *Brigham v. Mead*, 10 Allen 245. At the most, the legal effect of the word in question is a stipulation against liability to further taxation or assessment after the holder shall have fulfilled his contract to pay the one hundred per cent in the manner and at the times indicated. We cannot give to it the consequence of destroying the legal effect of the certificate."

C.

New parties were thus made to the suit by cross bill. With two exceptions, (and they demurred for want of equity,) the new parties filed answers to which replications were filed. After testimony had been taken; on motion, and before the hearing, the cross bill was stricken from the files.

Conceding the rule to be that a new party can not be made to a suit by cross bill, (and there is only one decision in the reports of this court which so holds, *Shields v. Barrow*, 17 How. 145,) yet the right to invoke the rule may be waived, and was waived in this case.

Of *Shields v. Barrow*, it is said in the *Encyclopedia of Pleading and Practice*, Vol. 5, p. 649:

"The decisions which maintain a contrary doctrine are based on a dictum of the United States Supreme Court, the reasoning of which seems to have been accepted as conclusive without question, by the courts following it, but which is disapproved in a well reasoned opinion in the United States Circuit Court."

In *Griffin v. Griffin*, 112 Mich., page 87, decided in 1897, the Supreme Court of Michigan, after referring to the case of *Shields v. Barrow*, on page 90, said :

"But considering the more recent cases, reinforced by statutes and codes, the trend is towards the practice ; and the statement that 'the undoubted weight of authority is to the effect that if a cross bill is brought for relief as well as for defense, and shows that persons not parties to the original bill are necessary parties to the cross bill, they may properly be made such,' 2 Daniell, Ch. Pl. & Prac. 1549, and note."

The following cases hold that new parties to a suit may be made by cross bill :

- Coster v. Georgia Bank*, 24 Ala. 37.
- Paulding v. Creagh*, 63 Ala. 398.
- Allen v. Tritch*, 5 Col. 222.
- McMillan v. Toombs*, 74 Ga. 536.
- Jones v. Smith*, 14 Ill. 229.
- Hurd v. Case*, 32 Ill. 45.
- Curd v. Lewis*, 1 Dana (Ky.) 351.
- Slaughter v. Huling*, 4 Dana (Ky.) 424.
- Madeiras v. Catlett*, 7 T. B. Mon. (Ky.) 475.
- Underhill v. Van Cortlandt*, 2 Johns. Ch. (N. Y.) 339.
- Brown v. Story*, 2 Paige (N. Y.) 594.
- Ewing v. Coffman*, 12 Lea (Tenn.) 79.
- Hildebrand v. Beaseley*, 7 Heisk. (Tenn.) 121.
- Stockard v. Pinkard*, 6 Humph. (Tenn.) 119.
- Blodgett v. Hobart*, 18 Vt. 414.

But in *Shields v. Barrow*, *supra*, the report of the case shows that two of the new parties brought in by cross bill pleaded to the jurisdiction of the Court, so that case is not an authority here against the practice of making new parties to a suit by cross bill.

Assuming, if the promoters, *before* they answered, had challenged the right of the Circuit Court to make them parties defendant, that the court would, as Justice Bradley did in *Forbes v. R. R. Co.*, 2nd. Woods 332, revoke the order allowing the cross bill to be filed; an entirely different question is presented *after* the proceedings above mentioned had taken place. The question is, if in a suit to foreclose a mortgage on the property of a corporation, a promoter has allowed an issue to be framed under which his liability as a stock holder may be enforced, can he afterwards evade that issue by invoking the doctrine that ordinarily in the foreclosure of a mortgage against the property of a corporation, a stockholder's liability can not be enforced?

III.

The evidence at least tends to show that not to exceed 202 of the 1,000 bonds are in the hands of innocent holders, and is clear that at least 401 of the bonds are in the hands of parties who, the Court says, are guilty of the frauds charged.

There is a vast difference between a decree of foreclosure and sale for \$202,000 and interest and one for \$1,000,000 and interest. What this court said in *Louisville Trust Co. v. Louisville etc. R. R. Co.*, 174 U. S. 674, on page 683, is especially true of mortgages of this class:

"We notice again that railroad mortgages or trust deeds are ordinarily so large in amount, that on foreclosure thereof, only the mortgagees or their representatives can be considered as probable purchasers."

The decree appealed from provides that the bonds may be used as cash at the sale of the property. The bonds in the hands of fraudulent holders will as much deter bidders at the sale, as the bonds in the hands of innocent holders. The decree will prevent competition.

James v. Railroad Co., 6 Wall. 752.

Drury v. Cross, 7 Wall. 299.

In the latter case, on page 304 the court said:

"If Cross & Co. had been satisfied with the transfer of the \$42,000 of bonds, which constituted the true indebtedness against the road, in the hands of Bailey & Co., the transaction on their part would have been free from censure; but the certain attainment of the object they had in view required more bonds. It was very clear that bidders might appear, *if the road was to be sold for not more than the face of these bonds, while they would be deterred from attending a sale where the sum to be made was over \$300,000. To bring the decree, therefore, up to that point at which competition would be silenced, it became necessary to use the bonds (\$280,000) in the hands of Jessup & Co.*"

IV.

The decree does not provide a minimum price at which the property must sell. By buying it in at a song, perhaps at only enough to cover court's indebtedness, estimated at \$125,000.00, there may remain nothing from which the fraudulent holders of bonds may be excluded on distribution; so that the parties de-

frauded would be remanded to their action for deceit. Although an action for deceit or fraud against promoters is easily maintained, yet in the light of the history of such litigation, a victory is often, if not generally, barren of results to the parties defrauded, for many reasons.

V.

Therefore, it would seem, if consistent with any known method of procedure, before possession of the property is parted with by the court; relief, so far as it can be, ought to be granted to appellants. This court declared in the foreclosure of the mortgages in *Louisville Trust Co. vs. Louisville, New Albany & Chicago R. R. Co.*, 174 U. S. 674, that all judicial proceedings must be adjusted to the facts as they are, and on page 688 said:

"We may observe that a court, assuming in foreclosure proceedings the charge of railroad property by a receiver, can never rightfully become the mere silent registrar of the agreements of mortgagee and mortgagor. It cannot say that a foreclosure is a purely technical matter between the mortgagee and the mortgagor, and so enter any order or decree to which the two parties assent without further inquiry. No such receivership can be initiated and carried on unless absolutely subject to the independent judgment of the court appointing the receiver; and that court in the administration of such receivership is not limited simply to inquiry as to the rights of mortgagee and mortgagor, bondholder and stockholder, but considering the public interests in the property, the peculiar circumstances which attend large railroad mortgages, must see to it that all equitable rights in or connected with the property are secured."

The Columbia Straw Paper Company is a type of the industrial combinations of the present commercial age. The relations of such combinations to the public are in many respects the same as those of a railroad corporation. The industrial combination, however, has this peculiar characteristic; it is organized to stifle competition.

VI.

There is not the reason for a speedy sale in this case that there was in the case of the *First National Bank of Cleveland v. Shedd*, 121 U. S. page 74, where the receiver's indebtedness was constantly increasing, and the property likely to be absorbed by court's indebtedness; but it is rather a case like that of the *Chicago & Vincennes R. R. Co. v. Fosdick*, 106 U. S. 47.

The answer of the Company alleges that the value of the property of the corporation is far in excess of its mortgage indebtedness, and the report of the Master shows that there is no other indebtedness. The affidavits of the mill men and others included here, show that the allegation in the answer of the company is true ; that the Straw Paper industry is reviving, and the probabilities are that the value of the property will be enhanced within a short period. The receiver's debt is not increasing ; but on the contrary, after paying insurance, taxes and maintenance there is a surplus.

Your petitioners, therefore, respectfully pray that a rehearing of this cause be granted. In case however, this motion should be denied, your petitioners pray : *First*, that the mandate direct the Court below to sustain the motion to reinstate the cross bill, and before the sale, "*to ascertain who these bondholders are ;*" (*Trustees of the Wabash & Erie Canal Co. v. Beers*, 2 Black 448, page 457 and 458 :) who are the holders of bonds without knowledge of the fraud, and who are the holders with knowledge thereof ; and that the decree of foreclosure and sale be so modified as to cover only the aggregate of the bonds and interest past due in the hands of innocent holders. *Second*, also to ascertain the amount of indebtedness due to the corporation from the promoters and bondholders, parties to the cross bill, on account of the unpaid stock subscriptions, and that there be a decree for the amounts due from each respectively ; and, *third*, that the costs of this appeal may be assessed against the respondents.

The undersigned humbly conceive that it is proper that this case should be reheard by this court, if this court shall see fit so to order, and they therefore respectfully certify accordingly.

JOHN S. COOPER,
of Counsel.

OTTO GRESHAM,
Solicitor for Appellants.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D., 1899.

CASE NO. 16,724.

TERM NO. 33.

HARRY W. DICKERMAN, *Trustee, et al.,**vs.*THE NORTHERN TRUST COMPANY, *et al.*

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

To MESSRS. CHARLES A. DUPEE, MONROE L. WILLARD AND
LEWIS MARSHALL, *Solicitors for Appellees:*

You are hereby notified, that on the _____ *day of* _____
1900, in the court room in the city of Washington, leave will be
asked to file the foregoing petition.

JOHN S. COOPER,
of Counsel.

Solicitor for Appellants.

SUPREME COURT OF THE UNITED STATES

NO. 33.—OCTOBER TERM, 1899.

HARRY W. DICKERMAN, *Trustee, et al.,*

vs.

THE NORTHERN TRUST COMPANY, *et al.,*

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

John E. West being duly sworn upon his oath says that he is a resident of the City of LaFayette in the State of Indiana; that for more than 30 years last past he has been continually engaged in the business of manufacturing paper of all grades and materials from book paper down to straw wrapping and roofing papers. For the last fifteen years he has been more specially engaged in the manufacture of straw wrapping paper, and that he is thoroughly acquainted with the business of manufacturing straw wrapping paper in all its branches, including that of buying the raw material, manufacturing the same into the finished product, the sale of the same in the open market and the care and management of the machinery and paper mills themselves.

Affiant further says that during the fifteen years last past he has built and constructed and put into practical operation five straw wrapping, straw board and manilla mills. That of four of these mills he drew the original plans himself; and built and constructed and put all of said mills in practical operation without any assistance whatever from any other person.

Affiant further says that succeeding the panic of 1893 the price of straw wrapping paper diminished in the open market from about \$25 a ton at the mill, to about \$16 a ton. That within the last year or two the price of straw wrapping paper has increased and that at the present time and for some time past and for at least six months last past the price of paper is \$25 a ton at

the mill, that there is a large and increasing demand for the same, and if there is no change in the financial condition of the country there is no reason why the price of straw wrapping paper should not remain at the price of \$25 per ton at the mill for some years to come.

Affiant further says that the only source of competition in the sale of straw wrapping paper is that of a manilla paper known in the trade as "bogus manilla" manufactured from wood-pulp. That on account of the scarcity in the country of the kind of wood from which wood-pulp is made the price of that article has increased so materially as to take it out of competition with straw wrapping paper as it did during the depression caused by the panic of 1893.

And further Affiant saith not.

(Signed) JOHN E. WEST.

THE STATE OF INDIANA,)
COUNTY OF TIPPECANOE.) SS :

Before me the undersigned a Notary Public in and for said County and State this 17th day of March 1900 personally came the above named John E. West and made oath before me that he had read the above and foregoing Affidavit and that the matters and things therein stated are true and thereupon he subscribed his name thereto in my presence.

In witness whereof I have hereunto set my hand and affixed my Notarial seal this 17th day of March 1900.

(Signed) W. D. HESTON,

Notary Public.



My commission expires the 2nd day of June, 1901.

(Signed) W. D. HESTON,

Notary Public.

SUPREME COURT OF THE UNITED STATES

NO 33.—OCTOBER TERM, A. D., 1899.

HARRY W. DICKERMAN, *Trustee, et al.,*

vs.

THE NORTHERN TRUST COMPANY, *et al.*Writ of Certiorari
to the United States
Circuit Court of
Appeals for the
Seventh Circuit.STATE OF MISSOURI, }
COUNTY OF PIKE, } ss :

Henry S. Carroll being duly sworn, on oath deposes and says that he resides at St. Louis, in the State of Missouri. That he was a stockholder in the Clarksville Paper Mill, located at Clarksville, in the State of Missouri, at the time the corporation owning said Mill executed an option whereby said Mill was subsequently acquired by the Columbia Straw Paper Company. That the Clarksville Mill did a profitable business, and in some years paid as high as 20 per cent. dividends on its capital stock.

Affiant further says that from statements made by mill owners and others at and about the time of sale of mills to Columbia Straw Paper Company, now held by the Receiver thereof, that their value was then the amounts agreed to be paid by the said Columbia Straw Paper Company.

Affiant is not informed as to the present condition and value of said mills, but the improved condition of business generally and the increased demand for the product ought to have increased their value much above what it was three or four years ago, and that a much larger amount ought to be realized from a sale, and

mills in operation are likely to increase in value for the next year or two.

(Signed) HENRY S. CARROLL.

Subscribed and sworn to before me, this 19th day of March, A. D., 1900. My term expires March 8th, 1904.



(Signed) THOS. S. McQUEEN,
Notary Public.

PART OF FOLLOWING AFFIDAVIT OF
JOHN B. SHERWOOD.

GEORGE P. JONES,
RECEIVER MORTGAGED PROPERTY,
COLUMBIA STRAW PAPER COMPANY.

CHICAGO, March 14, 1900.

Otto Gresham, Esq., 701 Tacoma Bldg., City:

DEAR SIR:—In answer to your verbal request made this day to me, I herewith give you an estimate of the receipts and expenditures for the ensuing year of the mills of which I am Receiver. There are fifteen of the properties rented at a monthly rental of \$2,100.00 making \$25,200.00 revenue.

The taxes for the present year will amount to.....	\$10,000.00
Insurance.....	7,000.00
Interest	3,000.00
Watching mills	1,000.00
Clerk hire and office rent.....	1,600.00
Making a total of.....	\$22,600.00

In addition to the above, there is outstanding Receiver's Certificates amounting to \$51,200.00. The Court allowed me to issue up to \$55,000.00.

This does not allow anything for extraordinary expenses that are liable to come up at any time, nor for the payment to the Receiver for services.

Hoping this is what you want, I am,

Yours respectfully,

(Signed) GEORGE P. JONES,
Rec.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D., 1899.

CASE NO. 16,724.

TERM NO. 33.

HARRY W. DICKERMAN, *Trustee, et al.*,*vs.*THE NORTHERN TRUST COMPANY, *et al.*

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

STATE OF INDIANA, }
COUNTY OF MARION. } ss:

John B. Sherwood, being first duly sworn on oath deposes and says, that there has been no sale of the property of the Columbia Straw Paper Company under the decree in the above entitled cause.

Affiant further says that he is informed and believes that counsel for respondents estimate that the Receiver's indebtedness and court costs, which includes allowance for services of Trustees, solicitors and Receiver, will aggregate \$125,000.00. Of this amount but \$51,200.00 is Receiver's indebtedness, as appears from the statement of the Receiver attached hereto and made a part hereof, most of which was incurred at the beginning of the receivership. That six of the mills have burned down, and the insurance money has been paid to the Northern Trust Company. That eighteen of the mills are idle and fifteen are rented, as appears from the Receiver's statement, at an annual rental of \$25,200.00, while the aggregate on all for taxes, insurance, interest, watching mills, clerk hire and office rent of the Receiver, only amounts to \$22,600.00. That the leases executed by the

Receiver are for short terms and determinable on the termination of the receivership, and for this reason, are necessarily lower than if the leases were for definite terms. That the Receiver has not himself undertaken to operate any of the mills. That at present there is a greater demand for straw paper than there has been for eight or ten years last past, and the indications are that this demand will increase rather than diminish in the next few years.

Affiant further says that he is informed and believes that the underwriting agreement, whereby the \$2,113,000 of surplus stock was obtained, (the existence of which agreement affiant asserted in his testimony in the Record on pages 345-346), has been exhibited to and seen by parties in the city of Chicago, Illinois, since the 22nd day of January, 1900, the date of the opinion of this Court in this cause; that affiant is ignorant of its exact terms.

Farther affiant saith not.

(Signed) JOHN B. SHERWOOD.

STATE OF INDIANA, }
COUNTY OF MARION. } SS:

Before me the undersigned, a Notary Public, in and for said County and State, this 20th day of March, 1900, personally came the above named John B. Sherwood, and made oath before me that he had read the above and foregoing affidavit and that the matters and things therein stated are true, and thereupon he subscribed his name thereto in my presence.

In witness whereof, I have hereunto set my hand and affixed my notarial seal this 20th day of March, 1900. My commission expires the 24th day of October, 1902.



(Signed) S. MAHLON UNGER,
Notary Public.

N. D. C. 1897. 33

FILED
NOV 26 1897
JAMES H. MCKEN

Brief of Willard for Response

511

Filed Nov. 26, 1897.

Supreme Court of the United States,

OCTOBER TERM, A. D. 1897.

HARRY W. DICKERMAN, TRUSTEE, ET AL.,
Petitioners,

v/s.

THE NORTHERN TRUST COMPANY AND OVID B.
JAMESON, TRUSTEES, AND COLUMBIA STRAW
PAPER COMPANY,
Respondents.

Petition of Harry W. Dickerman, Trustee, et al., for a Writ of Certiorari
to the United States Court of Appeals for the Seventh Circuit.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION.

CHARLES A. DUPEE

AND

MONROE L. WILLARD,

SOLICITORS FOR RESPONDENTS.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1897.

HARRY W. DICKERMAN, TRUSTEE,

ET AL.,

vs.

THE NORTHERN TRUST COMPANY AND

OVID B. JAMESON, TRUSTEES, AND

COLUMBIA STRAW PAPER

COMPANY,

Petitioners,

Respondents.

Petition of Harry W. Dickerman, Trustee, et al., for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

BRIEF FOR RESPONDENTS,

The Northern Trust Company and Ovid B. Jameson, Trustees, in
Opposition to Petition and Brief contained therein.

The decision of the Circuit Court of Appeals, Seventh Circuit, in this case, is upon page 700 of the record. It is reported in Vol. 80 Fed. Rep., 450. It affirmed the decision of the Circuit Court, reported in Vol. 75 Fed. Rep., 936. (Record p. 631)

The facts are so fully stated by the Court of Appeals in its decision as to necessitate but a brief statement here.

The bill was filed to foreclose a trust deed in the nature of a mortgage executed by the defendant Columbia Straw Paper Company to complainants as trustees to secure 1,000 bonds, each for \$1,000. The defendant

company answered, admitting all the substantial allegations of the bill. These petitioners owned a small minority of stock in the defendant company, and as such stockholders obtained leave to become parties defendant and to answer the original bill, also to file a cross-bill. They filed their answer, charging fraud and collusion on the part of the company and its controlling stockholders in an over-valuation of the properties conveyed to the company, for which its bonds and most of its stock were issued. Their answer insisted that by means of such over-valuation the bondholders and others acquired stock of the company without sufficient return therefor; that a liability arose on the part of the bondholders to the company to pay for the stock acquired by them, and they insisted that the court in that proceeding should determine the amount of such over-valuation and liability and set off such liability against the bonds. Petitioners owned 1,855 shares of the 40,000 shares of the company's stock.

The facts and details are fully stated in the opinion of the Court of Appeals. (Rec., 697-700.)

Complainant's position in regard to such answer was that there had been no fraud or collusion, no fraudulent over-valuation, and no over-valuation at all; that all parties, including the petitioners, or their assignors, were parties to and participated in the transaction by which the defendant company acquired its properties; that everything done had been done in entire good faith, and that there had been no concealment or misrepresentation; that every bondholder had paid *par* for his bond, and that all the charges of the answer were groundless.

Next, that had there been an over-valuation, this

would be immaterial, unless such over-valuation were fraudulent, and that such was not the fact in this case.

"It is now well settled that in order to invalidate an issue of stock which is issued for property taken at an over-valuation, it must be shown not only that there was an over-valuation, but also that such over-valuation was intentional and consequently fraudulent.

"The property is not to be considered as over-valued merely because, subsequently, it turns out to be so. The various circumstances under which the valuation was made should be considered in determining the *bona fides* of the transaction."

1 Cook on Stockholders, Sec. 35.

2 Thompson on Corporation, Sec. 16-18, and cases cited.

Coit v. Gold Amalgamating Co., 119 U. S., 343, 7 Sup. Ct. R., 232.

Gamble v. Queen's Co. Water Co., 25 N. E. R., 201.

Young v. Erie Iron Co., 31 N. W. R., 814.

Bickley v. Schlag, 20 Atl. R., 250.

Next, that even if there had been a fraudulent over-valuation, in such a proceeding as this by the corporation, or by stockholders on its behalf, there would be no stock liability. This is on the principle that, while courts can enforce contracts as made, and while they may, in proper cases, rescind contracts, they cannot make contracts for a man or hold him upon a contract which he never made.

"The corporation itself, after issuing its stock as paid-up stock, and declaring it so to be, cannot subsequently repudiate that declaration and agreement and proceed to collect, either from the person receiving the stock or his transferee, the unpaid

part of the par value. It is estopped from so doing.

Where, however, actual fraud enters into the transaction, then the corporation is not estopped from having the agreement set aside. The person receiving the stock can then be compelled to return the stock or its market value and take back that which he gave to the corporation for it; but the corporation cannot hold him liable for the par value of the stock."

1 Cook on Stockholders, Sec. 38.

"Stockholders in a corporation, who participate or aid in the issue of paid-up stock, upon payment of less than its par value, or who have knowledge of the fact and acquiesce therein, can not afterwards complain of the transaction, either in their own behalf or in behalf of the corporation. They are bound by estoppel or acquiescence."

1 Cook on Stockholders, Sec. 39.

Brant v. Ehlen, 59 Md., 1.

In the above case JUSTICE WOOD, delivering the opinion of the court, said:

"The stock held by the defendant was evidenced by certificates of full paid shares. It is conceded to be the contract between him and the company that he should never be called upon to pay any further assessments upon it. The same contract was made with all the other shareholders, and the fact was known to all. As between them and the company this was a perfectly valid agreement. It was not forbidden by the charter or by any law of public policy, and as between the company and the stockholders was just as binding as if it had been expressly authorized by the charter. If the company, for the purpose of increasing its business, had called upon the stockholders to pay up that part of their stock which had been satisfied 'by discount,' according to their contract, they could have successfully resisted such a demand. No action could have been main-

tained by the company to collect the unpaid stock for such a purpose. The shares were issued as full paid on a fair understanding, and they bound the company."

Phelan v. Hazard, 5 Dillon, 45-52.

In the above case Judge DILLON, in giving the opinion of the court, referring to cases where it was claimed that stock had been issued by the company for property of less value than the par value of the stock, said:

"The proof showed that the shares in question had been paid for precisely as they were originally agreed to be paid for, viz.: by a conveyance of the mining property to the corporation. This conveyance had been received and recorded by the corporation. Unless this agreement is rescinded or set aside for fraud, how can it be said that the stock has not been paid for? The parties have agreed that it has been paid for, and that agreement is conclusive, unless it is rescinded or impeached for fraud; and this can not be done unless the attack is directly made.

"The authorities establish that such a transaction is not *ultra vires* and absolutely void; second, that the contract is valid and binding upon the corporation and the original share-takers, unless it is rescinded and set aside for fraud, and that where the contract stands unimpeached, the court *even where the rights of creditors are involved*, will treat that as a payment which the parties have agreed shall be payment."

Corporations cannot rescind without restoring that which has been received.

2 Thompson on Corporations, Sec. 1635.

Even in case of a fraudulent over-valuation, the company has no equity except to rescind by a proper return of the land; where this has become impossible it cannot rescind.

DuPont v. Tilden, 43 Fed. R., 87.

In this case the contract between Stein and the company was fully executed. By it the stock company got \$200,000 and 39 mills, and Stein got the stock and bonds. This was the only contract between the parties. There was no stock subscription. Either that contract was valid and binding, which was the end of the matter, or was voidable. In the latter case, it might be promptly rescinded in a proper proceeding. If rescinded, the contract relations with the parties are ended. Each must return to the other what it received. If enforced, it must be enforced as made. Neither party can substitute another contract in the place of that actually made. Stein, or his grantees, could not be held to pay for the stock, as he never contracted to pay for it, except in the way shown in his contract.

It was further contended that these petitioners assented to the transaction whereby the bonds and stock of the corporation were conveyed for its properties, and were in no position to question the transaction.

The law is fully settled that where all the stock and all the bonds of a corporation are conveyed for property which the company acquires, all *then* stockholders assenting, neither the company nor any *then* or subsequent stockholders can complain.

Scofield v. Thayer, 105 U. S., 143.

Bank of Ft. Madison v. Alden, 129 U. S., 372 (9 Sup. Ct. R., 332).

Memphis R. R. v. Dow, 120 U. S., 287 (7 Sup. Ct. R., 482).

Higgins v. Lansingh, 154 Ill., 333.

Stuart v. St. L. R. R., 41 Fed. R., 736.

St. L. R. R. v. Tiernan, 37 Kas., 606 (15 Pac. R., 544).

Peoria R. R. v. Thompson, 103 Ill., 187.

Finally, it was contended that even were there an enforceable stock liability, such liability could not be enforced in this proceeding; that the defendant, being a corporation organized under the laws of New Jersey, stockholders could be liable only under the laws of that State in a proceeding had therein, and that in this proceeding, to which no creditor, and but a part of the stockholders were parties, the court could not grant the relief nor sustain the defense asserted by the answer.

The Circuit Court found that there was no evidence of fraud or of fraudulent overvaluation, or of any overvaluation at all; that there had been no misrepresentation or concealment; that the transaction by which the stock and bonds were turned over by the company in return for the properties which it acquired was known to all concerned, and that these petitioners participated in the transaction, and received in connection with it a part of the stock, and that every bondholder had paid in full for his bond. The Court of Appeals concurred in all these conclusions. The court in its opinion says (Rec., 700):

“ Upon a careful perusal of the record and testimony, we find no error in the conclusions of law or fact, and think that the decree of the Circuit Court should be affirmed. The defendants seemed to have failed wholly in making good the allegations contained in the answer.

“ The principal questions discussed and on which the case turned in the court below, seemed to be: whether there was any fraud or collusion practiced in the organization of the company and the issuing of the stock; whether stock was issued without consideration and which has not been paid for; whether there had been a fraudulent overvaluation of the property and different mill plants conveyed to the defendant company under the options taken

by Stein, and if so, whether those defendants who are the appellants here, being simply stockholders in, and not creditors of, the company, were in a position to urge such matters in defense to defeat the foreclosure of the mortgage or deed of trust given by the company to the trustees to secure the one million dollars of bonds on sale of which the money was raised to put the new enterprise upon its feet. The main question is whether there is any liability on the part of the stockholders in defendant company which can be enforced in this proceeding, or set up as a reason for defeating the foreclosure. We are of opinion that these contentions made by the defendants were properly overruled. *The prime difficulty was in the lack of evidence to support the allegations of the answer. There was no evidence of any fraudulent overvaluation or of issuing stock without consideration.*"

A petition for rehearing presented and argued was denied. (Rec., 732.)

This finding of the lower courts, that in the transaction there was no evidence whatever of fraud or overvaluation renders it unnecessary to consider whether the other positions of complainants would have been a sufficient answer to the claims contained in the answer of petitioners.

I.

The main contention of petitioners is under heading "III" (pp. 12-18 of petition), that the Court of Appeals erred in determining that there was *no* evidence to support the allegations of the answer of defendant stockholders.

Will this court grant the petition, in order to review the conclusion of the Court of Appeals upon the question of fact, where the unanimous court found the facts

as the Master in Chancery and as the Circuit Court had already found them, especially when, had the finding been different, petitioners would not have been entitled in that proceeding to the relief they sought?

Is this finding, which is so entirely just under the evidence, such a question of gravity and importance as to lead this court to require the cause to be certified to this court?

We shall not venture to trespass upon the indulgence of the court, by stating in detail the evidence, which abundantly justified the action of the court, (and which is scattered through the record and summed up by the Court of Appeals), or by a discussion of the facts involved.

II.

Petitioners are not entitled to prosecute their petition so far as the same relates to questions of procedure in the trial court.

It is settled that in a bill to foreclose a mortgage or trust deed, stockholders are not necessary parties, and they are allowed to become parties by leave of court only when some fraudulent conduct on the part of the bondholders, trustees, or other parties, is alleged to have occurred which could affect the rights of the trustees to foreclosure proceedings.

Thomas v. Railroad, 109 U. S., 526.

The court let in petitioners, who were minority stockholders, to establish, if they could, the charges of fraud averred in their answer, which, if proved, might prevent foreclosure or create a right of set-off on the part of the company against the bonds representing the mort-

gage indebtedness. They then, and for that purpose, became entitled to be heard upon all questions involved, whether of procedure or otherwise. It was determined by the court that they had wholly failed to establish the necessary facts to support their answer, and hence were entitled to no relief. They were then, *ipso facto* set outside the case and became strangers to it, and it stands as it would had they never been permitted to intervene—as a case between the trustees and the defendant company, whose action, in the absence of fraud, binds all stockholders, including petitioners. The defendant company is satisfied, and does not seek to escape the decree. It did not prosecute an appeal to the Court of Appeals, nor does it join in this petition.

We contend, then, that whether the bonds should have been produced before the decree was entered; whether undue haste was exhibited by the trustees in taking possession under the Flanagan judgment; or what else was done in the case, are matters about which these petitioners have no right to be heard, that they are not entitled to prosecute this petition in regard thereto, and that the case stands between the complainants and the defendant company exactly as it would had petitioners never been permitted to intervene, and their first appearance in the case was to present this petition.

III.

Petitioners contend that the bonds should have been produced before decree of foreclosure and sale.

First, this proposition is one which, as we have shown, petitioners have no right to urge here. Only the company which represented petitioners and other stockholders, in a manner satisfactory to itself, could do so.

Secondly, whether they should have been produced or not is not a question of such gravity and importance as to cause this court to grant this petition.

Finally, the court did not err in not requiring the production of the bonds before such decree.

The opinion of the Court of Appeals (Rec., 703) fully covers the question: The court says:

“ Another contention made and decided in the court below was that the bonds should have been produced before the Master. It was alleged in the original bill that ‘ all of the 1,000 bonds of \$1,000 each, with the coupons attached, were duly issued, negotiated and sold, and are now outstanding and valid obligations of the defendant Columbia Straw Paper Company, and the same, with the coupons annexed thereto, have come into the possession of, and are now held by, a large number of persons who have become the owners thereof;’ and this was admitted by the defendant company in their answer. The testimony for complainants shows that the bonds described in the mortgage were certified and issued by the defendant company; that the company had not paid any of them; that the interest coupons due January 1, 1895, have not been paid. The Master found that all the issue of said 1,000 bonds was negotiated and sold, and is now outstanding and is a valid obligation of the defendant company, and that they were due and unpaid.

The court also so found, and ordered a sale unless payment was made within a specified time. The trustees were not the owners of the bonds, or any part of them, but they were *mortgagees in possession*, and had power under the trust deed to enforce the lien by foreclosure and sale. In these cases where bonds issued by railroads, or other large corporations, on a large scale, and held in trust by trustees, but really owned by persons in many parts of the civilized world, it has not been the practice, nor would it be practicable, to require the bonds to be produced before the court or Master before a decree *nisi* is entered. The practice has uniformly been to enter a decree of sale without the production of the bonds. Of course, they cannot be paid or share in the proceeds of sale until brought into court for payment and cancellation. In many cases years elapse after a decree is entered before all the bonds are brought in, the money lying in the registry of the court awaiting their presentation for payment, and in some cases all the bonds are never produced or paid. If the rule required all the bonds to be produced before the court or Master before a decree for sale could be made, it would, in many cases, be a partial denial of justice. No such practice has ever obtained to our knowledge. The sale is made for the benefit of all properly concerned. The decree is not final as to the persons or debts entitled to share in the proceeds. When the time for distribution arrives any creditor may challenge the title of the claimant of any bond presented. The course of proceeding in such case is properly indicated in *Taber (Toler) v. E. Tenn. R. R.*, 67 Fed. Rep., 168, *Guaranty Safe & Deposit Co. v. Green Cove Springs*, 139 U. S., 150."

When it was established that all the bonds had been issued and were still outstanding and wholly unpaid; that none of them were held by complainant trustees, but by a large and widely scattered body of persons who had become their owners, and that they were negotiable and

their ownership might be changed before a sale, no useful object could have been attained by their production before a decree; while to require such production would have resulted in a practical denial of justice to many holders of the bonds. The cases cited for petitioners are cases where the defendant insisted on the production of the note, or where plaintiff had attempted to establish a debt in the absence of the defendant without such production.

And it appears from those cases that where, as in this case, the amount of the indebtedness was admitted, the production of the note was not essential.

Counsel conceded in their petition for rehearing that had there been an admission of the indebtedness the production of the bonds would have been unnecessary. (Rec., 714.) Here it was admitted that the bonds were outstanding obligations of the defendant company. It was proved that they were due, and this proof could be and was conclusively made without the production of the bonds.

IV.

Petitioners urge (p. 10) that undue haste was made in obtaining the Flanagan judgment, and on the part of the trustees in taking possession of the property.

We reply as before, that petitioners are in no position to urge this point; that the question is not one of gravity and importance, and that there is no evidence of collusion or fraud in regard thereto, and that the parties did only what they had a legal and moral right to do.

V.

Petitioners urge (p. 21) that the Circuit Court should have allowed their answer to be amended in order to show that the organization of the defendant company and the execution of the bonds and mortgage were parts of a scheme to form a "trust," or unlawful combination in restraint of trade.

Again, we say that petitioners, who were admitted to the case only for a special purpose, which they failed to establish, are in no position to urge this point.

Next, that the question does not, under the evidence in the record, present a question of gravity or importance, and that there was no error on the part of the Circuit Court in refusing leave to amend.

The answer of appellants was, by leave of court, filed May 18, 1895. (Rec., 106.) October 10, 1895, the issues were referred to the master to take proofs and report. (Rec., 263.) The court ordered that proofs for complainants be closed in twenty days, which would be October 30th, and for defendants, within thirty days thereafter. Appellees' proofs were concluded October 25th. (Rec., 292.) The time for defendants to close proofs expired November 30th. It was, on their motion, extended to December 19th, and later to December 30th. (Rec., 293.) Afterwards it was further extended to January 6th, when the time expired, and the court refused to further enlarge it. (Rec., 325.) It appears from the record (p. 316) that on February 9, 1896, after the time in which to take testimony was closed, appellants filed, without leave of court, their amended answer; also, that on March 4, 1896, a motion for leave to

file amended answer was denied. (Rec., 325.) As the amended answer, so filed without leave, set up the "trust" question, it must be presumed, as was the fact, that this is the answer that appellants desired to file.

It was too late after the proofs were closed, for parties to come in and make a new defense to be set up by amended answer, and the court acted correctly in refusing such permission. Seeking at such time to make such new defense was an attempt to trifle with the court and disregard its orders.

Moreover, the court, upon the petition of Miller, had already done what petitioners say it could do of its own motion. It had investigated the trust question.

Miller's petition was filed January 10, 1896. (Rec., 295.) The petition set out, with great particularity, the trust theory. (Rec., 295-305.) The petition itself, various affidavits and all the evidence in the case were before the court.

Several days were consumed upon the argument, in reading the testimony and citing the decisions applicable. The court then took the case under advisement. (Rec., 314, 315, 324, 325.) Finally, on March 4, 1896, it denied the petition (Rec., 325), holding that there was no "trust." It was bad faith for appellants to delay until February 9th, thirty days after the proofs were closed, before making an application for leave to make such amendment.

Neither upon the final hearing, nor before the Court of Appeals, was this trust question presented or argued, and for this reason the opinion of the Court of Appeals, as well as that of the Circuit Court, does not refer to the question, it having been abandoned.

It is plain that no trust was involved.

The Federal Act, relating solely to interstate commerce, has no application here.

U. S. v. E. C. Knight Co., 156 U. S., 1.

The New Jersey laws authorize a company to purchase and hold real estate in New Jersey or elsewhere, such as its business may require. There were seventy similar companies doing business in the United States of which this company acquired thirty-nine—but little more than half in number or in capacity for manufacturing. A monopoly *could not* be created by it. There is no evidence that the company ever designed to or did create a monopoly.

“A voluntary dissolution of all competing companies and the formation of a single corporation under the statutes of some state, the new corporation becoming the purchaser of all the properties of the antecedent corporations, and the shareholders in such corporations receiving shares in the new corporation, upon the basis agreed upon in the scheme of re-incorporation, is not an illegal act.”

5 Thompson's Commentaries, Law of Corporations, Sec. 6,400-1.

Oakdale Mfg. Co. v. Gast, 28 Atl. Rep., 973.

Were it necessary to go further, it appears from the record that appellants were participators in the alleged illegal acts; that the stock certificates they held and on which they had any standing in court were attended with any illegalities that affected the bonds and mortgage. They were parts of the same alleged illegal trust or combination. Appellants were prime actors in the scheme as shown by the options they executed. They were *in pari delicto* with the parties whom they attacked.

It is elementary that courts will give no relief of any kind to parties to an illegal transaction.

1 Pomeroy's Eq. Jur., Sec. 397, 401, 2nd Ed.

Dent v. Ferguson, 132 U. S., 50; 10 Supr. R., 13.

VI.

Finally, petitioners urge (p. 22, *et seq.*) that the Court of Appeals erred in sustaining the action of the Circuit Court in striking their cross-bill from the files.

Again, we represent that petitioners are not qualified to raise this question; that it is not a matter of gravity and importance whether the court struck this cross-bill from the files, and that there was no error therein.

In this case the defendant stockholders (petitioners) came in to file answer and cross-bill, not under any original right, but solely by permission of court.

The Court of Appeals says (80 Fed. R., 456):

"The answer to this objection is that the appellants were not made defendants, and only came in and were allowed to intervene by permission and order of court. The cross-bill was not an original proceeding on their part. Stockholders are not necessary parties in a bill against the corporation to foreclose a trust deed. They are only allowed to come in, under leave of the court, where fraud on the part of the bondholders, trustees or other parties has occurred which would affect the right of the trustees to foreclose. (*Thomas v. Railroad Co.*, 109 U. S., 526; 3 Sup. Ct., 315.) Appellants were not creditors, and constituted but a very small part of the stockholders. The court, upon petition, permitted them to become defendants and put in an answer and cross-bill upon the supposition that their

answer might show a state of facts which would defeat or qualify the right of foreclosure. The substance of their answer was, as before stated, that the bondholders had acquired their stock without paying for it, and were indebted to the company for it, and that there was a fraudulent overvaluation of the property. The answer was filed on May 18, 1895, and the cross-bill on the same day. The matters set up in the cross-bill were the same, being substantially identical in averment and phraseology with those set up in the answer, and were clearly matters of defense. There was, therefore, no need of a cross-bill, and to file such a one was an abuse of the leave given by the court. For these reasons the court was amply justified in withdrawing its permission and striking the cross-bill from the files. This practice is recognized and fully sustained in *Forbes v. Railroad Co.*, 2 Woods, 323; Fed. Cas., No. 4,926. In regard to cross-bills which are filed under permission, that permission presupposes that the matter of the cross-bill will be germane to the original bill, and such as could not be set up by answer. And if when the cross-bill is filed it appears to violate all these rules, and to be an abuse of the leave granted by the court, the court will withdraw the permission and dismiss the cross-bill, instead of putting the complainant to his demurrer. This practice seems to be entirely rational and just, and such as a court of equity will approve. The cross-bill was not germane to the original bill, which was simply to foreclose a mortgage. It alleged a fraudulent over-valuation of property by the company and by directors and stockholders; that the contract under which the bonds were issued was fraudulent and void; and that the bonds and mortgage were void, all of which was matter of defense, and had been set up in the answer. It also alleged a liability on the part of the bondholders, or some of them, as stockholders, which, if it existed at all, could only be enforced at the instance of creditors, in a suit to which all stockholders were parties. This was not germane to a bill to

foreclose a mortgage. If two answers setting up the same matter had been put in, no one would question that one of them should be struck out, and the labeling of one as a cross-bill does not change the rule. A cross-bill, being an auxiliary bill merely, must be a bill touching matters in question in the original bill. If its purpose is different from that of the original bill it is not a cross-bill, even though the matters presented in it have a connection with the same general subject (*Crosse v. De Valle*, 1 Wall., 1); and a cross-bill setting up no defense except what could be set up by answer will be dismissed (*Investment Corp. v. Marquam*, 62 Fed., 960)."

It would seem that nothing need be added.

The interlocutory orders of a court are always under its control. The permission which a court has given, it may, for good cause, revoke. If it finds that a party whom it has let into the cause is, under pretense of seeking affirmative relief, setting up what is merely matter of defense, it may revoke its original order allowing the cross-bill to be filed, or, since it amounts to the same thing, may strike the cross-bill from the files.

Here, since the petitioners were able to furnish no evidence to support the allegations of their answer, there was the same inability to support the same allegations in the cross-bill, and they have sustained no injury by the order of court.

The entire case of petitioners was wholly destitute of merit. In a suit by trustees to foreclose a mortgage against the defendant company, they sought as stockholders to show that, in connection with the execution of the mortgage and the bonds secured thereby, there had been a fraudulent overvaluation of the property which had been conveyed to the company for its stocks

and bonds—a transaction to which they were parties. They insisted that by reason of such fraud a stockholder's liability arose to pay the unpaid part of the stock; that in this proceeding, to which no creditor and but a part of the stockholders were parties, the court should ascertain the extent of the overvaluation, make an assessment upon the stock, and set off such assessment against such bondholders as happened to own stock. There were many reasons why this was impossible which it is not necessary now to state. As petitioners utterly failed to establish the foundation fact of their case, that there was any fraud of any kind, they are entitled to no further assistance, and it is submitted that no useful purpose can be subserved by granting their petition.

Respectfully submitted.

CHARLES A. DUPEE and
MONROE L. WILLARD,

Solicitors for Respondents.





N^o 196. 33.

United Supreme Court
FILED
FEB 13 1899
JAMES H. McKENNEY
CL

Brief of Willard for Resp^{ts}.

Filed Feb. 13, 1899.
Supreme Court of the United States.

OCTOBER TERM, A. D. 1898.

Case No. 16,724.

Term No. 196.

HARRY W. DICKERMAN, Trustee of Second
National Bank of Rockford, Illinois, F. J. DIEM,
E. P. HOOKER, Trustee for the Merchants
National Bank of Defiance, Ohio, Trustee and
in his own behalf and JAMES C. RICHARDSON,
Petitioners,

vs.

THE NORTHERN TRUST COMPANY and OVID
B. JAMESON, Trustees,
Respondents.

AMENDED BRIEF FOR RESPONDENTS.

CHARLES A. DUPEE,
MONROE L. WILLARD,
LOUIS MARSHALL,

Solicitors for Respondents.



IN THE
Supreme Court of the United States.

OCTOBER TERM, A. D. 1898.

No. 196.

HARRY W. DICKERMAN, Trustee of Second
National Bank of Rockford, Illinois, F. J.
DIEM, E. P. HOOKER, Trustee for the
Merchants National Bank of Defiance, Ohio,
Trustee and in his own behalf and JAMES C.
RICHARDSON,

Petitioners,

vs.

THE NORTHERN TRUST COMPANY and
OVID B. JAMESON, Trustees,

Respondents.

BRIEF FOR RESPONDENTS.

STATEMENT OF THE CASE.

This proceeding was a bill (Rec., 3), brought by The Northern Trust Company, a corporation organized under the laws of Illinois, and doing business at Chicago, and Ovid B. Jameson, a citizen of the State of Indiana, as trustees, against the Columbia Straw Paper Company, a corporation organized under the laws of New Jersey, to foreclose a trust deed covering thirty-nine paper mill plants, given by the Columbia Straw Paper Company to the appellees to secure the payment of one thousand

(1,000) bonds of the company each for the sum of \$1,000, payable to the bearer or registered owner thereof in gold coin and bearing interest at six per cent. per annum from December 1, 1892, payable half-yearly, the interest on the bonds being secured by coupons in the usual manner attached to the bonds.

The bill alleges (Rec., 14), and the proof showed (Rec., 219), that on December 1, 1893, said company made default in redeeming or discharging the one hundred bonds which, by the terms of the bond and mortgage, were to be paid and redeemed on said date by payment therefor of the sum of \$110,000 and accrued interest; that on December 1, 1894, said company made default by failing to redeem or discharge the one hundred and five bonds or any part thereof, which, by the terms of the bond and mortgage, were to be paid and redeemed on said day; that said company further made default on December 1, 1893, and on December 1, 1894, by failing on each of said dates to pay into the sinking fund referred to in the mortgage the sum of \$110,000, together with interest on such bonds as had been redeemed December 1, 1893; that said company on June 1, 1894, made default in payment of the interest which on that day became due on each of said entire issue of bonds, and on December 1, 1894, said company made default in the payment of interest which at that day became due and payable on said entire issue of bonds.

The bill also alleged and the proof showed that the trust deed should become enforceable if an execution should be sued out against any of the property of the company; and thereupon the trustee should declare the principal and interest owing on the bonds to be immediately payable (Rec., 30); that on January 22, 1895, (Rec., 224)

an execution was sued out against the property of said company upon a judgment obtained against it by James Flannagan, before George W. Underwood, a justice of the peace in Cook County, Illinois, and that said company had failed to remove, discharge or pay such execution; that by reason thereof the trustees had declared the principal and interest owing upon said entire issue of bonds to be immediately due and payable (Rec., 220), that the said Columbia Straw Paper Company was insolvent, and that complainant had taken possession of all the mortgaged property.

At the commencement the Columbia Straw Paper Company was the only defendant. It filed its answer (Rec., 70), admitting all the substantial allegations of the bill. During the progress of the case, appellants, minority stockholders of said company, upon petition (Rec., 74), were allowed to come in and answer and to file a cross-bill. Their answers were filed (Rec., 86), setting up collusion and fraud on the part of the company, and some of its stockholders, especially in over-valuing the various mill plants and properties upon which options of purchase had been taken, and which were transferred to the company in exchange for its bonds and capital stock. The said Columbia Straw Paper Company having been organized for the purpose of taking such conveyances, and thus consolidating said mill plants, defendant's contention was that in consequence of said fraudulent over-valuation, a defense in the nature of set-off existed in favor of the company against such bondholders as were also stockholders to the extent of the unpaid part of the stock held by them. They also filed a cross-bill (Rec., 123), which was mainly a verbatim copy of their answer. The court afterwards struck the cross-bill from the files. (Rec.,

256.) This act of the court appellants claim was erroneous. Later they amended their answer (Rec., 316) alleging that the bonds and mortgage were part of an illegal scheme to create a monopoly, regulate prices and prevent competition. The amended answer alleged that there were seventy mills engaged in the manufacture of wrapping paper, *all in competition with each other*; that the Columbia Straw Paper Company obtained control of forty of the mills and operated but sixteen. Appellants afterwards sought leave to further amend their answer. As no showing was made as to the contents of such proposed amendment, or as to any necessity therefor, the court denied the motion. (Rec., 264.)

The cause was referred to the Master in Chancery to take proofs and report upon all the testimony taken in the case. He reported (Rec., 265) April 15, 1896, that the material allegations of the bill were sustained by the proof; that all of the issue of bonds was sold and was outstanding and was a valid obligation of the company, and that the indebtedness of the company upon the bonds was \$1,249,632.86; that the contention of the defendants that the stock of the company which passed into the hands of Emanuel Stein was unpaid, was not supported by the evidence; that said stock was received by said Stein in fulfillment of his contract with the company as fully paid stock, and that, as a matter of law, any question in regard to the liability of stockholders of the company could not be inquired into in this proceeding. He also found that the contention of the defendants, that the procurement of the Flannagan judgment was the result of collusion with the company, was not supported by the testimony, and that there were no creditors of the company except those represented in this proceeding.

Defendant stockholders filed exceptions (Rec., 508) to the report. On hearing the exceptions were overruled, and decree of sale *nisi* was entered in favor of complainants (Rec., 525). On appeal to the Circuit Court of Appeals for the Seventh Circuit, that court affirmed the decree. (Rec., 571; 80 Fed. R., 450.)

In 1890, there were in the territory west of Pittsburg, east of Lincoln, Nebraska, south of Minneapolis, and north of the Ohio river, upwards of sixty mills engaged in the manufacture of wrapping paper from straw. (Rec., 339.) The business, as it had been carried on by the separate mills, each with a full set of officers and managers and with inadequate capital, had not been profitable. In 1890, an attempt had been made to consolidate these mills or part of them. The purpose of the scheme was to obtain sufficient capital, to reduce expenses by a consolidation of the various interests and by the organization of a single management. John B. Sherwood and E. G. Church undertook, at one time, to secure capital and to form a corporation for the purpose. They obtained options of purchase from a considerable number of mill owners. (Rec., 142.) The scheme for some reason fell through. In February, 1892, Emanuel Stein and the said Church commenced investigating said mill properties and business with a like end in view. At the same time, James C. Richardson and Fred C. Trebein were attempting a similar plan on behalf of mill owners, but their scheme, as an independent plan, failed of accomplishment.

Stein soon after met Sherwood, who had considerable knowledge as to the value of mills, cost of production, and probable profits, and Sherwood thereafter aided Stein

in procuring options and in the formation of plans. About the same time Stein sought the advice and assistance of millmen and dealers in straw paper and, of such parties, especially associated with himself, John B. Halladay, Fred C. Trebein, Church and Sherwood. These persons set about investigating the value of mills, the prices at which they could be purchased, and arranging for a corporation which should acquire them. Through their efforts Philo D. Beard and Thomas D. Ramsdell of Buffalo, also became associated with them in the enterprise. Finding it necessary to employ legal counsel in the formation and development of their plans, as well as to procure financial assistance, they employed the firm of Guggenheimer & Untermyer, of New York City, as persons who had had a large experience as advisors and assistants in the promotion and formation of industrial enterprises. Stein and his associates, after investigating the prices at which the mills could be bought, determining what mills would be useful and necessary, investigating their respective outputs, etc., arranged to procure option contracts from the owners of thirty-nine mill plants, situated in eight different states and twenty-eight different counties. Such options were to run to December 31, 1892. Between February and December, 1892 (Rec., 454, *et seq.*), there were many meetings between the persons named and the respective mill owners who were to come into the enterprise. At these meetings the terms of the option contracts and all the details of the scheme were substantially arranged. The option contracts were prepared by the legal counsel. They were executed by the respective mill owners to Beard and Ramsdell, and their assigns. The option contracts bore different dates extending over a number of months. They were alike except in dates,

amounts and names of vendors. The preambles of the option contracts (Rec., 503) were that the vendor mill owners owned certain mill properties and were engaged in the production of straw paper, that they desired to sell to a corporation to be organized by the second parties; that the latter had offered to organize such corporation, provided they could secure options of purchase; that the second parties proposed to organize one or more corporations with a share capital of one million dollars of preferred stock, three million dollars of common stock, and with a bonded debt of one million dollars, secured by a mortgage or trust deed on the property of the company.

By section one the vendor corporation granted to the second parties an option of purchase until December 31, 1892, by them or their nominees, or assigns, or a corporation to be organized by them, of absolute title to the property described.

In section two, the vendors made a like grant of their stock and agreed, if their options were accepted, to deposit the stock in *escrow*.

In section three, there was a like agreement as to title deeds, etc.

In section four, the second parties agreed if they accepted the options, they would pay for the properties a specified sum of money and a specified amount of common and of preferred stock in such company as they might organize as soon thereafter as should be practicable.

In section five, the second parties agreed in case of acceptance of options to organize a corporation to be known as the Columbia Straw Paper Company, which

should have a share capital of one million dollars preferred stock, and three million dollars common stock, and should have power to bond and mortgage its property for one million dollars.

In section six, the directors of the vendor company agreed to act as the directors in the new company if they should be so requested.

In section seven the vendors granted their good-will.

Section eight states that it is understood that the second parties, their nominees or assigns, are "to procure options from certain persons and firms and from other corporations engaged in the manufacture of straw paper, with a view of transferring the options so to be obtained by them, or of accepting such options and the properties referred to therein, and subsequently transferring title to the corporation."

Section nine provided that the bonds and stock of the company to be organized, might be issued in part payment of all properties to be acquired under the options.

Section ten declared that when the second parties *at their own cost and expense*, should have organized such company, the title deeds, etc., which had been placed in *escrow*, should be delivered to the end that the corporation to be formed be vested with the title to the property. If the company purchased directly it was to pass resolutions authorizing the purchase, and agreeing to pay the cash and allot the bonds provided for to the vendor company.

Section eleven declared that a list of the properties was attached.

The above form of contract was to be used when the grantor was a corporation. Other printed forms were

used when the vendors were individuals or partnerships. Only such changes were made as were rendered necessary by such facts. There was no provision in the contracts as to the number of plants upon which options should be procured, and which the company should ultimately acquire. This evidently was left to be governed by circumstances as they should develop or for a future agreement.

Although the second parties were by the terms of the contract to organize a new corporation at their own expense, although they were to obtain the options and do all necessary work preliminary thereto, examine and perfect titles, procure and record conveyances, expend money on the employment of agents and attorneys, give their own services for an indefinite term, and do all necessary work preliminary to promoting the company and discharge all the expenses thereof, and this without any possibility of reward from the company or any one in case the scheme should fail prior to its complete execution, no provision, in terms, was made for their compensation or reimbursement. Appellees contend that it was the intention of the parties that all the stocks and bonds of the company, except so far as the same were specifically appropriated by the contracts, should be for promotion expenses. Appellants' claim is that all this labor and expense was to be rendered gratuitously.

The parties of the second part to the options were Philo D. Beard and Thomas B. Ramsdell of Buffalo. Ramsdell soon abandoned the enterprise, and transferred his interests in the contracts to Emanuel Stein of Chicago. Beard also at a later date assigned his interest to Stein, but for what consideration the evidence does not disclose. Stein accepted the options, acquired title to the

properties and organized the Columbia Straw Paper Company. In pursuance of the plan, he made a proposition (Rec., 401) to the company for a sale to it of the properties described in the option contracts attached to his proposition. The proposition was, with some modifications, accepted by the company, and on October 15, 1892, he entered into an agreement with the company (Rec., 404) by the terms of which he agreed to acquire a good title to all of the property mentioned in the option contracts, and to convey the same to the company, and also to furnish the company \$250,000 in cash. In return the company agreed, in consideration of the foregoing to turn over to him the stock and bonds of the company. This contract was executed by the parties by the transfer of the property and money to the company and the delivery of the stock and bonds to Stein. This was the only contract which was made with regard to the company's stock, except as to eighteen shares taken by the board of directors prior to the above contract. There was in the transactions nothing in the nature of an ordinary stock subscription. The transactions between the company and Stein were shown on the records of the company. On January 28, 1893, the foregoing contract was modified by a further agreement between Stein and the company. (Rec., 495.)

All the stock of the company, other than what remained in Stein's hands, was afterwards acquired by the subsequent holders either from Stein or his transferees.

There was no agreement between Stein and the mill-owners, or other parties in interest, either in the option contracts or elsewhere, that he should procure options

on or convey to the company more than the thirty-nine mills which were transferred to the company.

John B. Sherwood, one of the promoters of the company, who testified on behalf of defendant stockholders (appellants), and who held \$25,000 of stock which he had obtained from Stein for services in procuring options, stated (Rec., 341) that it was agreed and was the understanding that options should be taken on all the mills. On cross-examination (Rec., 367 to 371) he said that these statements were made to him by Stein, Church, Trebein and Halladay. But, being pressed, he was wholly unable to testify that either of these persons so stated to him, but did say that it was *his own* understanding that seventy mills were to be taken in, and that in his conversation with Stein and others organizing the company, he talked about seventy mills, and they never said to him otherwise than that the seventy mills were to go in. That was the extent of his evidence on that subject, and there was no evidence to support him.

February 8th, about a month after the foreclosure suit was commenced, Sherwood addressed to Stein the following letter, and addressed similar letters to the other directors of the company (Rec., 145-375):

“INDIANAPOLIS, February 8, 1895.

“DEAR SIR: I expect you, Mr. and the others engaged in the formation and management of the Columbia Straw Paper Company, from whom I received twenty-five thousand dollars in the stock of said company for information given and services rendered, to jointly make said stock good to me. I shall give you until February 21st, next, to consult and make arrangements for the payment. If, at the end of that time, I do not hear favorably on the proposition, I shall communicate with the different stockholders and creditors

and submit a plan to them of enforcing a stock liability, existing over one million dollars, growing out of the manner of the formation of the company, by which means a substantial value will be given to all the stock of the company and the unsecured indebtedness liquidated in full.

I assure you that the method of the organization of the company will be brought to light in a court of equity, and the liability fixed, notwithstanding the manner in which the records of the company have been made to read, for I am familiar with the whole proceeding. A receiver will then act for the creditors and stockholders, as well as for the bondholders, and all the parties will be held to be holders of their stock by original subscription on the facts found.

Very truly yours,

JOHN B. SHERWOOD."

He testified (Rec., 374):

"I think it was in March, 1895, possibly as early as February, 1895, when I found, to protect my interests as a stockholder, a fight had to be made on the mortgage. I immediately took steps necessary to make a fight. I refer to the present fight. (Rec., 375.) I am partly in it; I promoted it, induced it, and brought it about. (Rec., 377.) Had the men to whom I addressed the letter come down with twenty-five thousand dollars, and made my stock good, I should not have picked out my men and got them together."

The affidavit in support of the petition of appellants to become parties was by John B. Sherwood; the petition was verified by the oath of Sherwood alone (Rec., 84); the answer of the defendant stockholders to the original bill was signed by Sherwood as agent for said respondents (Rec., 99); the cross-bill of said respondents was verified by said Sherwood alone (Rec., 116); *no mill owner or vendor in the option contracts was called as a*

witness by or on behalf of appellants, or appeared to testify in the case. And no stockholder other than Sherwood testified to any facts which would tend to show that anything done by Stein, or by the company, did not have the full sanction of every mill owner and stockholder. No one of the appellants supported the allegations of the answer by his testimony or by any affidavit. Appellants derived their stock from Stein. They are all either mill owners, vendors under the option contracts, or they have received their stock from such vendors. Appellees contend that appellants are the mere tools and pawns of Sherwood, who has prosecuted this proceeding for the purpose of extorting money.

Dickerman, Trustee, one of appellants, has in all (Rec., 101), 400 shares of preferred and 400 shares of the common stock of the company. He acquired it from Freeman Graham, Jr., and Julius Graham, who were the owners of the paper mill at Rockford, Illinois, and who executed to Stein the option therefor, for \$160,000, payable \$53,000 in cash, \$53,000 in preferred stock, and \$106,700 in common stock, in all \$212,700. The sum of \$52,700, being the difference between the selling price named in the contract and the amount called for by the contract, and being about one-third the selling price, was in excess of the agreed value of the property, and was a *bonus*, or gift of stock, or an agreed share of the enhanced value of the consolidated property above its prime cost from the mill-owners.

Diem, another of appellants, is the owner (Rec., 101) of 110 shares of preferred and 120 shares of common stock of the company. This stock is a part of what he received from Stein in payment of his mill at Dayton, Ohio. The option price of his mill was \$36,000, pay-

able \$12,000 in cash, \$12,000 in preferred stock, and \$24,000 in common stock. Of this amount \$12,000 was a *bonus* of stock, or by way of division.

Hooker, as trustee for the Merchants' National Bank of Defiance, Ohio, and individually, owns 125 shares of preferred and 250 shares of common stock of the company (Rec., 101). In his option contract his selling price was \$35,000, payable in cash \$11,667, in preferred stock \$11,666, and in common stock \$22,333, making in all \$46,666. Of this stock \$11,666 was by way of *bonus* or division of stock, (Rec., 479.)

Hooker, individually, bought of Stein four bonds, each of the denomination of \$1,000, and with them received a *bonus* of \$2,400 of stock. (Rec., 149, 436.) His present holding may be made up, in part, of such stock.

Richardson, the remaining appellant, owns 150 shares of the preferred and 300 shares of the common stock, which were delivered under an option contract executed by him and his associates, and in part payment of his mill at Monroe, Michigan. (Rec., 101.) The option price was \$40,000, payable \$14,000 in cash, \$13,000 in preferred stock and \$26,000 in common stock, making a total of \$53,000, of which \$13,000 was a *bonus* or division of stock. (Rec., 479.)

Collectively appellants owned 785 shares of the 10,000 shares of preferred stock and 1,070 of the 30,000 shares of the common stock. Of the entire 1,855 shares held by them 1,217 shares were those acquired under their contracts as a *bonus* or gift.

Similar arrangements were made with the other mill-owners. In addition to his selling price each vendor was to be *given* an amount of common stock equal to one-

third the price of his mill. (Rec., 144.) The *bonus* or division so given to the vendors in the option contract amounted to about \$700,000.

Stein, according to the option contracts, paid the mill-owners \$766,000 cash, \$629,000 preferred and \$1,258,000 common stock, making the amount of \$2,653,000.

He sold each of the one thousand dollar bonds for \$1,000 cash. Out of the one million dollars realized therefrom he gave the company \$250,000 and the mill-owners \$750,000, and he paid the mill men \$16,000 additional in cash.

In selling the bonds it was found necessary to give the purchaser of each bond a *bonus* of \$200 in preferred and \$400 in common stock of the company. All the bonds were sold in this way to any one who would buy them. The larger part were sold to parties having no connection with or knowledge of the above transactions. A considerable part was purchased by parties more or less acquainted with the transactions.

Guggenheimer & Untermeyer of New York city, sold bonds to many parties and purchased a considerable amount themselves. (Rec., 183.) The same was true as to Beard and others. A very considerable amount of the bonds were purchased by different mill owners. (Rec., 456.) In this way, Stein parted with \$600,000 of the stock. Stein paid commissions for selling the bonds, but the rate or amount of such commissions is not shown. Every mill owner knew (Rec., 456) that the bonds were being sold and that with each bond was given twenty shares of the preferred stock and forty shares of the common stock. They were asked to take bonds on those terms. A number of them did so, including Hooker,

one of the appellants. (Rec., 456.) No objection was made to such procedure until after the commencement of the foreclosure suit.

Stein employed to assist him a firm of lawyers in New York city, highly experienced (Rec., 342) in aiding in the promotion of industrial corporations, and whose reputation appeared to be a guaranty that everything would be intelligently and efficiently perfected. Upon this firm fell the drafting of the option contracts, the arrangement of the entire plan by which the properties were to be acquired by Stein and the company through him, his disposition of the stock and bonds to pay mill owners and to discharge his own expenses, the preparation of bonds, stocks, trust deeds, and all the numberless details attending the creation and accomplishment of such a scheme. The transactions employed nearly a year. It appears that said firm was, like Stein himself, employed on a contingent basis; since had the scheme fallen down at any stage, they could have received no compensation. What Stein was to pay said firm or did pay them, or what would have been a reasonable compensation to them, does not appear. It is only shown that they rendered for the most of the year a very large amount of services in very important and intricate matters. It is shown that Stein employed a law firm in Chicago to examine the titles of the mill properties, drawing conveyances and doing other of Stein's work; that Stein paid said firm for said services \$2,000 in cash, \$8,000 in bonds, \$1,600 in preferred stock and \$33,200 in common stock. (Rec., 459, 460.) In all, \$44,800, that such services extended over six months and were reasonably worth \$50,000. (Rec., 491.)

It was shown that Stein paid \$1,500 for recording fees. (Rec., 493.)

Also, that under an amendment of the original agreement between Stein and the company (Rec., 595), the company assumed notes on the purchased property amounting to \$185,000, and received in return bonds and stock amounting to \$476,000, making a gain to the company of \$291,000.

Also (Rec., 495), that an additional sum of from \$15,000 to \$20,000 was paid by Stein to the company.

Also that Stein paid to other attorneys in connection with other matters relating to titles, \$5,000 (Rec., 461). Also, in order to procure titles to the property within the time limited, he paid an additional sum for the Rockford mill (Rec., 477), the Clarkesville mill (Rec., 479), the Defiance mill (Rec., 479), the Marsailles mill (Rec., 480), the Lawrence Paper mill (Rec., 482), the Logansport mill (Rec., 482), and the Joliet mill (Rec., 482, 483). The amount of these additional sums was not shown by the evidence.

Stein also paid to the company an additional sum of \$15,000 for certain stock. Stein employed to assist him in obtaining options Sherwood, Church, Trebein, Halladay and Beard. Of these, Church and Trebein were mill men who to a greater or less extent represented that class, as also did Halladay, who was a dealer in paper. Stein paid Sherwood for his services \$25,000 in common stock (Rec., 340). It was not shown what he paid the other four for their services. He also paid the expenses of all.

Appellants contended that the sum of \$2,113,000, being the difference between the par value of the stock

and bonds turned over to Stein by the company and the prime cost of the mills, represented an overvaluation of the property conveyed to the company, and that unpaid stock to that extent was issued to Stein and divided between him and the bondholders. Appellants, upon whom rested the burden of proving an overvaluation, made no attempt to fix the value of Stein's services, and but slight attempt to show his disbursement for the services of others, or the value of such other services, or the amounts disbursed by Stein in the prosecution of the enterprise beyond the amounts of the mill-men under the option contracts and the amount of stock which went as a part of the bond purchase.

In the above way \$5,000,000 which Stein received from the company was expended by him, except the sum of \$1,055,700 in stock. From this latter sum should be also deducted:

(1.) The amount of compensation which should be allowed Stein for nearly a year, for all his services anterior to the complete organization of the company, all his compensation having been contingent on his ultimate success.

(2.) The amount allowed by Stein to Beard, Church and Halladay and other millmen for their assistance in promoting the scheme. These services extended over a greater part of the year and were on a like contingent basis. One of these assistants (Sherwood) shows that he was paid by Stein \$25,000 in stock of the company.

(3.) The amount of the compensation from Stein to Guggenheimer & Untermeyer for their services as counsel and assisting in all steps preliminary to the organization of the company, such services being on a like contingent basis.

(4.) All reasonable amounts allowed by Stein for services of other agents.

(5.) All expenses incurred and paid by Stein and his agents and assistants, including traveling expenses, hotel bills, office rent, printing and other matters.

(6.) Additional sums paid by Stein for five mills.

(7.) Amount paid by Stein as commission for selling bonds.

Appellants, upon whom the burden rested, introduced no testimony which will enable the court to determine as to the above amounts or as to reasonable charges for promotion.

Stein has owned no bond of the company since the commencement of the foreclosure proceeding. He parted with all he owned long before the commencement of the suit.

It was the belief of all parties that the earning capacity of the new company would be sufficient to earn a profit of more than \$700,000 annually; that the cost of paper which had been \$18 per ton, could by economic management and greater capital, be reduced to \$16; that as an average sale price per ton for a term of years had been \$26.83, it could be sold at \$26; that 90,000 tons could be sold annually, thus showing a profit of \$720,000; that this would pay six per cent. on the bonds, or \$60,000; eight per cent. upon the preferred stock or \$80,000; pass to the sinking fund \$110,000 and pay at least fifteen per cent. dividends on the common stock. (Rec., 140, 145, 183, 184, 204, 488, 489, 588.) If but 50,000 tons could be sold, the profits would make the other payments and pay five per cent. on the common stock.

The Columbia Straw Paper Company continued in business until January 22, 1895. At that time it was insolvent. It had failed to discharge 100 of its bonds December 1, 1893, and 105 bonds December 1, 1894, as agreed (Rec., 219), and it had failed to pay the interest due on its bonds June 1, 1894, and December 1, 1894.

On January 22, 1895, a judgment was rendered against it in favor of James Flannagan (Rec., 224). The officers of the company facilitated the immediate entry of the judgment. Execution was at once issued but not paid or discharged. On the same day the trustees declared the principal and interest on the bonds to be immediately due and payable. They at once took possession of all the mortgaged property, and on January 24, 1895, filed their bill to foreclose the trust deed.

BRIEF.

I.

The one thousand bonds, each for \$1,000, issued by the Columbia Straw Paper Company, and secured by the trust deed sought to be foreclosed, were valid outstanding bonds.

II.

The court did not, as alleged in the fourth error assigned for appellants, err in denying appellants leave to amend their answer in order to show that the organization of defendant company and the execution of its bonds and mortgage were parts of a scheme to form a trust or unlawful combination in restraint of trade. There was no such denial.

III.

The evidence fails to show that the organization of the Columbia Straw Paper Company and the execution of its mortgage and the issuance of its bonds was in pursuance of a scheme for the purpose of organizing a trust contrary to the laws of the State of Illinois, or the Statutes of the United States.

U. S. v. C. E. Knight Co., 156 U. S., 1.

Thompson on Corporations, Sec. 6,400, 1.

Oakdale Mfg. Co. v. Gast, 28 Atl. Rep., 973.

- Gibbs v. Gas Co.*, 130 U. S., 396.
People v. North River Sugar Refining Co., 54 Hun., 354.
Pittsburg Carbon Co. v. McMillan, 119 N. Y., 46.
Emery v. Candle Co., 47 Ohio St., 320.
Mound River Coal Co. v. Barclay Coal Co., 68 Pa. St., 173.
Arnot v. Coal Co, 68 N. Y., 558.
India Bag Assn. v. Koch, 14 La. Ann., 168.
State v. Nebraska Distilling Co., 29 Neb., 700.
Richardson v. Buhl, 77 Mich., 632.
Craft v. McConnoughy, 79 Ill., 346.
People v. Chicago Gas Trust Co., 130 Ill., 268.
Ford v. Chicago Milk Shippers Assn., 155 Ill., 166.
Distilling Co. v. People, 156 Ill., 468.
Sharp v. Taylor, 2 Phillip's Ch., 801.
McBlair v. Gibbes, 17 How., 232.
Brookes v. Martin, 2 Wall., 70.
Natl. Distilling Co. v. Cream City Co., 86 Wis., 352-355.
Dennehy v. McNulta, 86 Fed. R., 825-827.

IV.

Appellants are not creditors, and the rights of creditors are not involved in this suit.

V.

There was no fraudulent overvaluation of the properties conveyed by Stein to the defendant company, and hence, all the stock became fully paid.

Coit v. Gold Amalgamating Co., 119 U. S., 343.

Ibid. v. Ibid., 14 Fed. Rep., 12.

Bank of Fort Madison v. Alden, 9 Sup. Ct. R., 332.

1 Cook on Stockholder, Sec. 35.

2 Thompson on Corporations, Secs. 16-18.

Gamble v. Queens County Water Co., 25 N. E. Rep., 20.

**Young v. Erie Iron Co.*, 31 N. W. Rep., 814.

Bickley v. Schlag, 20 Atl. Rep., 250.

Carr v. Le Fevre, 27 Pa. St., 113.

Huntington v. Attrill, 118 N. Y., 355.

Prospect Park R. R. v. Concy Island R. R., 144 N. Y., 163.

VanFleet v. Jones, 75 Hun., 340.

Schenk v. Andrews, 57 N. Y., 133.

Boynnton v. Andrews, 63 N. Y., 93.

Douglas v. Ireland, 73 N. Y., 100.

Lake Superior Iron Co. v. Drexel, 90 N. Y., 87.

Skinner v. Smith, 134 N. Y., 240.

Lorillard v. Clyde, 86 N. Y., 384.

Stewart v. St. Louis R. R. (Neb.), 41 Fed. R., 736.

N. W. M. Life Ins. Co. v. Cotton Exchange, 75 Fed. R., 155.

Natl. Tube Works v. Gilfillan, 124 N. Y., 302.
Grant v. E. & W. R. R. Co., 54 Fed. R., 569.
Commonwealth v. Central Passenger Co., 52
 Pa. St., 506-515.,
Carr v. LeFevre, 27 Pa. St., 413.
Fogg v. Blair, 139 U. S., 118.
Clark v. Bever, 139 U. S., 96.
Handley v. Stutz, 139 U. S., 417.
Danville R. R. Co. v. Kase, 39 Atl. R., 301.
Whitney Arms Co. v. Barton, 63 N. Y., 62.
VanDyke v. McQuade, 86 N. Y., 38.
Whitney v. Camman, 137 N. Y., 344.
White v. Jones, 86 Hun., 59.
Monongahela Co. v. U. S., 148 U. S., 328.
Washburn v. Natl. Wall Paper Co., 81 Fed.
 R., 17.

VI.

The defendant corporation could not maintain an action or defense such as was set up by appellants.

1 Cook on Stockholder, Secs. 38-47.
Scovill v. Thayer, 105 U. S., 143.
Foreman v. Bigelow, 4 Cliff., 508.
Brant v. Ehlen, 59 Md., 1.
Phelan v. Hazard, 5 Dillon, 43-52.
Coffin v. Ransdell, 11 N. E. Rep., 20.
First Nat. Bank of Deadwood v. Mining Co.
 (Sup. Ct., Minn.), 44 N. W., 198.
Du Pont v. Tilden, 42 Fed. Rep., 87.
 New Jersey Corporation Laws, Sec. 55.
Hebbard v. Southwestern L. & C. Co., 36 Atl.
 R., 122.

- First Natl. Bank v. Guston*, 42 Minn., 327.
Krohn v. Williamson, 62 Fed. Rep., 869.
Williamson v. Krohn, 66 Fed. Rep., 655.
Wells v. Green Bay Co., 90 Wis., 442.
Proctor Land Co. v. Cook (Ky.), 44 S. W. Rep., 391.
Granite Roofing Co. v. Michael, 54 Md., 65.
Re Ambrose Lake Co., L. R., 14 Ch. Div., 390.
St. Louis R. R. Co. v. Tiernan, 37 Kan., 606.
Foss v. Blair, 139 U. S., 118.
Clark v. Bever, 139 U. S., 96.
Hundley v. Stoltz, 139 U. S., 417.
Union Loan & Trust Co. v. Road Co., 51 Fed. R., 840.
Smith v. Ferris Co. (Cal.), 51 Pac. R., 710.

VII.

Nor can appellants assert such a defense or a stock liability on behalf of the company.

VIII.

Appellants cannot, as stockholders, maintain a proceeding to enforce payment by the bondholders of their alleged unpaid stock for a fraudulent overvaluation since appellants participated and acquiesced in the transaction.

- 1 Cook on Stockholders, Secs. 39, 40.
In re Gold Company, L. R., 11 Ch. Div., 701-12.
Hinckley v. Pfister, 53 N. W. Rep., 21.
Callaman v. Windsor, 78 Iowa, 193.

- Lewis v. N. Y., etc., Iron Co.*, N. Y. Law Journal, Apr. 30, 1890.
- Clark v. American Coal Co.*, 86 Iowa, 436.
- Wood v. Correy R. R. Co.*, 44 Fed. R., 146.
- In re Syracuse R. R. Co.*, 91 N. Y., 4.
- Barr v. R. R. Co.*, 125 N. Y., 373.
- Kent v. Quicksilver Mining Co.*, 78 N. Y., 159-188.
- Parsons v. Hayes*, 14 Abb. N. C., 419.
- Langdon v. Fogg*, 18 Fed. R., 8.
- Thompson v. Bemis Water Co.*, 127 Mass., 595.
- McGeorge v. Big Stone Gap Imp. Co.*, 57 Fed. R., 262.
- Washburn v. Natl. Wall Paper Co.*, 81 Fed. R., 21.
- Ten Eyck v. Pontiac Co.* (Mich.), 72 N. W. R., 362.
- Nicrosi v. Calera Co.* (Ala.), 22 So. R., 147.,
- Woolfolk v. January*, 131 Mo., 620.
- Drake v. Suburban Water Co.*, 26 App. Div. (N. Y.), 499.
- Unkeles v. Colgate*, 148 N. Y., 529.
- Natl. Wall Paper Co. v. Hobbes*, 90 Hun., 288.
- Parsons v. Hayes*, 14 Abb. N. C., 419.
- Morawetz Private Corporations* (2d Ed.), Sec. 290.
- Langdon v. Fogg*, 18 Fed. R., 8.
- Scymour v. Spring Forest Assn.*, 144 N. Y., 341.
- 1 Pomeroy's Eq. Juris., 401, 402.
- Waterman on Set-off, pp. 3, 469, 470.

IX.

Where all the bonds and stock of a company are conveyed for property which the company acquires, all *THEN* stockholders assenting, neither the company nor any then or subsequent stockholder can complain.

Scovill v. Thayer, 105 U. S., 143.

Higgins v. Lansingh, 154 Ill., 133.

Coffin v. Ransdell, 110 Ind., 417.

Foster v. Seymour, 23 Fed. Rep., 65.

Stewart v. R. R. Co., 41 Fed. Rep., 736.

St. L. & Ft. S. & W. R. R. Co v. Tiernan,
37 Kan., 606.

X.

No fraud or circumvention was practiced on appellants.

XI.

In no view of the case can any relief be granted against the stockholders of the Columbia Straw Paper Company in this action brought in a forum other than that of New Jersey, the laws of which regulate this corporation.

Erickson v. Nesmith, 4 Allen, 233.

New Haven Horse Nail Co. v. Linden Springs Co., 142 Mass., 349.

Bank v. Rindge, 154 Mass., 203.

Marshall v. Sherman, 148 N. Y., 9.

Barnes v. Wheaton, 80 Hun., 8.

Lowry v. Inman, 46 N. Y., 119.
Young v. Farwell, 139 Ill., 326.
Fowler v. Lamson, 146 Ill., 472.
Patterson v. Lynde, 112 Ill., 196.
Id., 106 U. S., 519.
May v. Black, 77 Wis., 101.
Nimick v. Iron Works Co., 25 W. Va., 184.

XII.

The court did not err, in striking appellants' cross-bill from the files.

Thomas v. Brownville R. R., 109 U. S., 526.
Lund v. Skane Enskilda Bank, 96 Ill., 181.
Cross v. DeValle, 1 Wall., 1.
American Co. v. Marquans, 62 Fed. Rep., 660.
 1 Foster's Fed. Prac., Sec. 171.
 2 Daniel Chan. Prac., 1551.
Forbes v. Memphis R. R., 2 Woods, 323.
Deery v. Gray, 5 Wall., 795.
Gregg v. Moss, 14 Wall., 564.

Allis v. Ins. Co., 97 U. S., 144.
Gammon v. Pratt, 99 U. S., 619.
Mining Co. v. Taylor, 100 U. S., 37.
Hornbuckle v. Stafford, 111 U. S., 389.

XIII.

There was no necessity for a production of the bonds before the master.

Toler v. East Tennessee R. R., 67 Fed. Rep., 168.
Guaranty T. & S. Dep. Co. v. Green Cove Springs Co., 139 U. S., 150.

XIV.

There was no collusion or fraud in connection with the Flannagan judgment and the issuing of an execution thereon, and the proceedings by reason thereof.

- Standard Dictionary, "Collusion."
 Anderson's Dictionary of Law, "
 Bouvier's Law Dictionary, "
Gottlieb v. Miller, 154 Ill., 52.
Ill. Steel Co. v. O'Donnell, 156 Ill., 630.
Fogg v. Blair, 133 U. S., 534.
Farmers Loan & Trust Co. v. Green Bay Co.,
 Fed. R., 100-110.
County of Leavenworth v. Chicago, etc., 25
 6 Fed. R., 229.
Toler v. East Tennessee Ry. Co., 67 Fed. R.,
 168-177.

XV.

There was no need for demand against the defendant company for the payment of interest.

XVI.

The bonds were negotiable instruments.

XVII.

Complainants were mortgagees in possession when they filed their bill alleging that they held the property in trust for the bondholders. As such trustees they could maintain their bill.

SYNOPSIS OF ARGUMENT.

1. *The bonds of the company were valid outstanding bonds. They were paid for at their par value.*

2. *The court did not err in refusing appellants leave to amend their answer so as to set up the defence that the execution by the company of its bonds and mortgage was part of a scheme to create a monopoly restraining trade or creating an illegal trust. Such amendment was made by appellants without objection from court or counsel.*

3. *The Circuit Court considered this trust question, and held that the evidence did not disclose an illegal combination or arrangement. No such combination appears from the testimony. Appellants abandoned this contention in the Court of Appeals. The unification of some competing plants is not obnoxious to the law. The company operated but sixteen mills, and it had thirty active competitors. It could not hope to and did not control prices or destroy competition.*

4. *Appellants are not creditors, and the rights of creditors are not involved in this suit. The rights of minority stockholders are very different from those of creditors, and the authorities cited for appellants, so far as they involve the rights of creditors, have no application here.*

5. *There was no overvaluation; at any rate,*

no fraudulent overvaluation of the properties conveyed to the Columbia Straw Paper Company. Hence the stock of the company was fully paid, and there is no liability on the part of the stockholders.

6. The contract whereby Stein was to convey to the company the properties and cash called for by the contract and the company was to deliver to him stock and bonds of the company, was fully executed by both parties. There was no stock subscription, unless that contract may be considered as such. The company cannot retain the mill plants and cash and at the same time compel the parties who received the stock to pay what they never agreed to pay. There is no attempt to rescind the contract and return the considerations. Hence there is no stock liability.

7. As the company could not compel such payment, no stockholder acting on its behalf could do so.

8. If there was any overvaluation, fraudulent or otherwise, appellants knew of it, actively participated in it, partook of its fruits, are in equal wrong with the parties against whom they bring charges, and are in no position to ask the intervention of a court of equity. Being *in pari delicto* they are not entitled to relief.

9. By agreement all the bonds and stock of the company were conveyed for property which the company thereby acquired. Appellants ac-

sented thereto, as did all *then* stockholders, and appellants, or the parties under whom they hold stock, acquiesced in the transaction until after the failure of the company. As all parties then in interest assented, no one was injured, and no one can complain, the rights of creditors not being involved.

10. Especially is this true since no fraud, concealment, artifice or deceit was practiced on appellants, or any one. Appellants had actual as well as constructive notice of all that was done.

11. This is, in effect, a proceeding to enforce a stockholder's liability against bondholders. The remedies against stockholders whose stock is unpaid are created by the statutes of New Jersey, under whose laws the corporation was organized. Only such remedies can be pursued, and they can be enforced only in the courts of that state.

12. It was not error to strike appellants' cross-bill from the files. They filed their cross-bill, not by legal right, but by permission of the court, which always retains control of its interlocutory orders. The court, on inspection of the cross-bill and the evidence, rightly concluded that it was not such a cross-bill as appellants were entitled to file under its leave, and hence withdrew its permission. The cross-bill must have been dismissed on demurrer or on final hearing for want of equity, and the complaint of appellants is, not that their bill was dismissed, but that it was dismissed in an erro-

neous manner. If this were true it was error without prejudice, and is not ground for reversal; but it was not error to strike it from the files.

13. There was no necessity for the production of the bonds before the master. Complainant trustees were not the holders or owners of the bonds. The mortgage binding upon the company and upon appellants allowed a foreclosure by the trustees without such ownership on proof that the bonds were issued and outstanding, and that default had been made, etc. This proof was made. In such case, where complainants are not bond-owners, the production of bonds before a nisi decree of sale is never ordered, and such order would be a practical denial of justice.

14. There was no collusion or fraud in connection with the Flannagan judgment, the execution issued thereon, or the proceedings of the trustees by reason thereof. All of the property of the company was mortgaged. It was insolvent and unable to carry on business without a conversion of its mortgaged property. Accordingly, it properly allowed judgment to go against it and its property to be taken by its mortgagees. The company might lawfully give to its creditor all its property. There was no fraud, no dishonesty and no illegal collusion. This was not a case of a corporation able to conduct business which was strangled by a greedy creditor.

15. There was no necessity under the mortgage

for any demand against the company for payment of interest. There was full evidence that the company had defaulted in its interest. There was no necessity for any request by the bondholders to the trustees to take possession, although such request was made.

16. It was immaterial whether the bonds were negotiable instruments, although in fact they were.

17. The complainants were mortgagees in possession, declaring that they held in trust for the bondholders. Should the court decline their prayer they would become the absolute owners.

ARGUMENT.

I.

The 1,000 bonds, each for \$1,000, issued by the Columbia Straw Paper Company, and secured by the trust deed sought to be foreclosed, were valid outstanding bonds.

They were issued by the company to Stein, in part payment for the properties conveyed by him to the company, and were sold by him and paid for at their par value by purchasers from him. Of the \$1,000,000 received by him on such sale, he paid to the mill vendors \$766,000, being the cash payment called for by the option contracts, and paid the remainder to the company. (Rec., 407.) The validity of the bonds, it would seem, could not be questioned, and is not questioned by the petitioners except in so far as their validity may be affected by the "trust" question. The propositions in their brief do not raise a question as to their validity except on said ground; neither do their "Points of Argument" nor their argument itself. The pleadings of petitioners and their contentions in the Circuit Court and Court of Appeals, as well as here, are that there is a stock liability on the part of the bondholders which can be set off against the bonds. In this proceeding respondents deny such liability upon the following grounds:

II.

The court did not, as alleged in the 4th error assigned for appellants, err in refusing to permit appellants to amend their answer by the amendments to said answer tendered for the purpose of showing that the organization of the Columbia Straw Straw Paper Company and the execution of the mortgage to said appellees was in pursuance of a scheme for the purpose of organizing a trust contrary to the laws of the State of Illinois and the Statutes of the United States.

An examination of the record discloses that the original bill to foreclose was filed January 24, 1895, (Rec., 2), the answer of the defendant company was filed March 22, 1895, (Rec., 70), admitting all the substantial allegations of the bill. The original answer of appellants, admitted as defendants by leave of court, was filed May 18, 1895. (Rec., 74.) October 10, 1895, the issues were referred to the master to take proofs and report. (Rec., 215.) The court entered an order for parties to close their proofs by certain dates. (Rec., 215.) The time for appellants to close proofs expired November 30, 1895. It was extended on their motion to December 19, and again to December 30, and finally to January 6, 1896, when the court refused further to enlarge the time. (Rec., 265.) February 9, 1896, after the proofs were closed, appellants filed their amended answer. (Rec., 256.) In this answer appellants alleged that the bonds and mortgage sought to be foreclosed were parts of a combination or trust in re-

straint of trade, that such combination constituted a monopoly at common law and was in direct violation of an Act of Congress of the United States entitled, "An Act to Protect Trade and Commerce against Unlawful Restraint and Monopolies," approved July 2, 1890, and that the same was in violation of an Act of the General Assembly of the State of Illinois, entitled "An Act to Provide for the Punishment of Persons, Partnerships or Corporations forming Trusts, Pools and Combines, and Mode of Procedure and Rules of Evidence in such Cases," approved June 11, 1891, in force July 1, 1891.

The amended answer set out at length the alleged facts to support such charges. It averred *inter alia* (Rec., 257) that there were seventy mills engaged in the manufacture of straw paper, all in competition with each other; that the company obtained control of forty of the mills and operated but sixteen. (Rec., 263.)

The answer as so amended afforded appellants every opportunity to avail themselves of the "trust" or "monopoly" defense so far as the evidence tended to support it.

The court did not refuse permission to appellants to file this amended answer. On the contrary, it was filed and remained a part of the files and of the pleadings in the cause without objections from the court or counsel for the other parties to the suit. The claim that the court refused leave to file the amended answer rests upon misapprehension.

Leave to make a further amendment was sought on behalf of appellants, but as no showing was made as to the nature of such amendment or as to any necessity for it, the motion was denied (Rec., 264) and properly de-

nied, and there was no error in such denial. Certainly no further amendment was requisite to enable appellants to set up the trust or monopoly defense outlined in the fourth error assigned for appellants.

III.

The evidence fails to show that the organization of the Columbia Straw Paper Company and the execution of its mortgage to appellee, and the issuance of its bonds was in pursuance of a scheme for the purpose of organizing a trust contrary to the laws of the State of Illinois and the Statutes of the United States.

The history of this "trust" defense, as shown in the record, is as follows:

Before appellants filed their amended answer, February 9, 1896 (Rec., 257), and on January 10, 1896, Charles A. Miller filed his petition (Rec., 240) to be made a party defendant, and to set up the trust or monopoly defense. His petition sets out (Rec., 243) with great particularity the trust theory. The petition, its various affidavits and *all the testimony in the case* was submitted to the examination of the court. Several days were consumed upon the argument, in reading the testimony and citing the decisions applicable. The court then took the matter under advisement. (Rec., 255, 256, 264.) Finally on March 4, 1896, it denied the petition. (Rec., 264.) The opinion of the court in so doing was as follows:

"There are a number of motions in this case that I propose to dispose of. The first is the application of Miller to be made party defendant, with

leave to make the answer appended to his motion. I read over Mr. Miller's petition very carefully, and I understand the situation to be about as follows: He says that there were seventy paper mills in the territory between Pittsburgh and St. Paul, and that a movement was made by the owners and certain other parties to combine all those seventy mills; that they had an understanding among themselves that such a combination was to be made, and they started out to carry that intent into execution; that option contracts were made with thirty-nine or forty of these mills, and he insisted that the purpose was to take in the entire seventy mills, and stop competition between them in the manufacture of wrapping paper. It seems that thirty-nine of these options were obtained, and they passed into the hands of Mr. Stein. Afterwards Stein sold these mills to the defendant in this case, and the defendant, undertaking thereupon to go into the business of manufacturing wrapping paper, operated nineteen of these mills. Four were burned up, it seems, and for some reason, I suppose because of want of capital, or because it would not pay, the defendant started to operate but nineteen. That left thirty-one mills in the territory, and in competition with this defendant. Some of these thirty-one mills were very large concerns, it seems. Now, I cannot gather from that statement that the defendant, in fact, secured any monopoly of the business of manufacturing straw paper, and I cannot infer from what the defendant has done that it could have had the intent to create a monopoly in the business of making wrapping paper. I hardly think that wrapping paper, anyhow, could be regarded as an article of prime necessity, and, as I understand it, it is a commodity that can be made most anywhere in the temperate zone where straw grows. The idea of any concern getting up a monopoly on that article seems to me exceptional. However that may be, I don't think that I can properly say that this defendant ever had any intent to secure a monopoly in the manufacture of that article. The fact is that the other defendants here,

Dickerman and others (appellants), make it a very prime ground for complaint that the combination was not carried into effect.

"Sherwood and the parties he represents seem to think they were wronged because the entire seventy mills were not obtained, and monopoly to that extent and as far as it could be carried on established. At any rate, I do not see how the complainant in the case, which is a mere trustee for bondholders, some of whom may have been in the scheme, and others not—I do not see how any intent of that sort could be an objection to the complainants' suit.

"I do not think the contract between Stein and the defendant was intended for the purpose of creating a monopoly, or that it tended to create a monopoly, or that the contract had for its purpose a monopoly in fixing the price or limiting the quantity of straw paper as defined in the Illinois statutes. Of course, the defendant company could fix the price of its own commodity, the paper that it manufactured, just the same as any other manufacturer could, and the defendant could limit the quantity of its own output, just as any other manufacturer could. I do not understand that to be the thing that the statute is aimed at, or that is inhibited by the common law. In all questions like this the courts assume that the right between men is exercised peremptorily. The right of contract is the important thing that the courts have to protect. It is necessary for civilization and society that contracts that men make with one another be respected and enforced, and whenever a contract has been attacked on the ground that it is against public policy, the courts have said time and time again that the presumption is in favor of the contract, and that the burden is upon the party that claims its invalidity. Public policy is something that may be one thing to-day and something else to-morrow. It is a very uncertain quantity. A court ought to be very sure of its ground before breaking down a contract for that reason. I should not feel justified in undertaking to impeach

this contract for the reason that it is against public policy or against the Illinois statute, because I can not say that it is. At least, I cannot see clearly enough to take the responsibility of such a ruling.

"There is another point in this connection that has not been referred to by counsel on either side. The complainants in this case are trustees. That is what is shown on the face of the bill. They have the legal title of the property, and not only that, they were in possession of it at the time they filed this bill. Now, if I should make a ruling here that these contracts were void or non-enforceable in a court, the effect of that would be to leave all this property in the hands of these complainants. It could not be taken from them. It seems to me great wrong would be done if I should make that ruling.

"Now we can say, taking the statements of these complainants in the bill filed by them, even upon the assumption that the bonds are void as contracts and that the mortgage is also void, there still remains this bill and the assertion on the face of it that these complainants hold this property in trust, first, to pay the people that hold the bonds, and secondly for this company. Now, an owner of property may declare a trust if he wants to. He may do it by writing if he feels like it, even without consideration, and having done so, vest the equitable interests in the beneficiaries. Even on that theory, this bill, it seems to me, might be made to go. I could not turn complainants out of court who insist that they have a great fund of property for certain beneficiaries.

*"The provision of the statute of frauds is the old English statute, which says that an express trust can only be approved or manifested by some writing, but it is not a case of proof here. The trust is valid on the face of the bill. In the case of *Butler v. Port Arlington*, in 1 Connor & Lawson Chancery Repts., four parties filed a bill for specific performance of an agreement to renew a lease. It was stated on the face of the bill that the title had come to A by a conveyance from a former owner, and that a trust was declared for B. In other words, it was*

stated in the bill that the complainant *A* held his interest in trust for the complainant *B*. On the hearing of the case the objection was made, for it turned out by a further showing that the deed of conveyance from *A* to *B* contained no declaration of trust at all. It was therefore insisted at the hearing that the bill would have to be dismissed because *B* had no interest, but the court held that the declaration in the bill that there was a trust by *A*, that the property was held by him in trust for the owner, was sufficient to give the equitable interest to *B*, and that therefore in that case he did have an interest, and it was properly applied. This ruling was made by the Lord Chancellor of England.

"I mention that as illustrating the point I have referred to as the state of this case, even upon the showing that these bonds were void and non-admissible. Therefore, this being the view I take of it after reading over these documents very carefully and with a great deal of interest, I think I shall have to deny Mr. Miller's application to be made a party defendant. I think it would be a very exceptional thing if I should sustain it, and undertake to dispose of the case on that theory."

Thereafter appellants accepted this as the conclusion of the court upon the question, and did not urge the defense set up by their amended answer. They did not attempt to maintain it before the master, and his report does not allude to it. (Rec., 265.) They did claim the validity of such defense in their exceptions to the master's report (5th exception to master's report, Rec., 512), but did not press their contention upon the hearing upon the exceptions which were overruled. (Rec., 525.) On the hearing before the Court of Appeals appellants silently abandoned this contention, and hence the opinion of that court makes no reference to the question. (Rec., 571.) In appellants' petition and brief for rehearing before the

Court of Appeals (Rec., 581) no claim arising out of or connected with this trust question was made.

As appellants practically abandoned this defense in the trial court and wholly abandoned it in the Court of Appeals, they are not entitled to favorable consideration when they urge this defense in this court. And the defense is not seriously pressed here.

If this question whether the mortgage and bonds are such as a court of equity will refuse to enforce because they are parts of a scheme to form an unlawful trust or monopoly,—a position abandoned by appellants in the lower court and urged here by appellants who were active participants in whatever was done,—is to be entertained in this court, it is submitted that the answer must be in the negative.

1. The mortgage and bonds are not obnoxious to any Federal Act. The act referred to relates solely to interstate commerce, and has no application here.

U. S. v. E. C. Knight Co., 156 U. S., 1.

2. They are not condemned by the common law, nor by the act of the General Assembly of the State of Illinois, entitled "An act to provide for the punishment of persons, copartnerships or corporations forming trusts, pools and combines and modes of procedure and rules of evidence in such cases."

There is no dispute as to the facts. They are that in the territory in which the mill plants were located, there were seventy mills engaged in manufacturing wrapping paper, *all of which were in active competition with each other* (amended bill, Rec., 257); that the Columbia Straw Paper Company acquired but forty of these mills, leaving thirty active competitors outside; that these outside mills

in size and producing capacity were the equals of those purchased (Rec., 383); that said company never purchased, and never intended to purchase any of said thirty competing properties; that three mills so purchased were destroyed by fire, that four were dismantled as of no value except for machinery, and that of its remaining thirty-three mills the company operated but sixteen, which produced more than could be sold (amended answer, Rec., 262-263), and that while the company continued in business it operated but sixteen mills and had thirty active competitors. Under these circumstances it was impossible that the company could control the price of wrapping paper or obtain a monopoly in its manufacture and sale, or that, however visionary its stockholders or officers might be, that it could hope that seventeen mills could dictate to thirty. There is no evidence that it did control prices, or create a monopoly. There is no evidence that it limited or attempted to limit the output of wrapping paper. So far as the testimony shows the company manufactured all and more than it could sell. There is no evidence that the company arbitrarily attempted to or did increase or decrease the price of wrapping paper, or that any change in such price after the organization of the company was anything else than a result produced among many competitors by the natural laws relating to supply and demand. It is evident that any attempt of said company to sell wrapping paper below the cost of production would have been suicidal, and any attempt to demand more than such cost, and a fair and reasonable profit, would have made sales impossible, and thrown all business to the thirty competitors, and any new competitors which might spring up.

The company, then, never attempted to acquire, and

never did acquire a monopoly. It never limited or attempted to limit the manufacture or output of wrapping paper. It never regulated or fixed, or attempted to regulate or fix, the price of paper aside from the ordinary laws of trade.

It any promotor or mill-owner, at any time contemplated a purchase of substantially all the competing plants, or a purchase of so many as that the Columbia Straw Paper Company could control the price of straw paper, or obtain any approach to a monopoly, such purpose was abandoned before Stein acquired the properties or conveyed them to the paper company. Indeed, it is urged by appellants as a great grievance, and a breach of good faith that Stein and the company did not purchase to an extent to make such results possible.

The Columbia Straw Paper Company died from *excess of competition*, coincident with the immense decline in the demand for wrapping paper which attended the "panic," and because the selling price of paper was wholly outside its control. As it was not a monopoly, as it could not control prices or regulate any output but its own, as it was subjected to a fierce competition, and as its organization was soon followed by a general financial depression, it was moribund from that time, and its early death is in part attributable to the fact that it wholly lacked the illegal powers with the use of which it is charged.

It is plain that the entire gravamen of the charge against the Straw Paper Company is the acquisition by it under the circumstances of thirty-nine properties theretofore owned by different corporations, partnerships or individuals, with no purpose to create a monopoly, regulate prices or output. By economic methods the com-

pany might manufacture more cheaply than any one of its predecessors, and might sell to better advantage, and that is all that it hoped or could hope to accomplish, and such act or purpose is not prohibited by law.

Certainly, at common law, the purchase by an individual, partnership or corporation of the property of another, or others engaged in the same business is not against public policy, and the reasons are the same as to each class. The corporation, so far as it does not act *ultra vires* its charter powers, stands upon the same plane as the individual or the firm.

And provisions whereby the vendor was to refrain for a limited time in a limited district, from engaging in the same business, have been sustained with much unanimity.

In *Oakdale Manufacturing Co. v. Gast*, 26 Atlantic R., 973 (Sup. Ct. R. I.), the facts were these:

All the manufacturing companies of New England engaged in a certain business, except one, had turned in their stock at an over-valuation to a new company, taking an amount of stock in the new company represented by such over-valuation. The sellers agreed not to carry on a like business for a term of years. The bill was for an injunction by the company against one of the parties to restrain him from violating his covenant. The answer of defendant was that this contract was void, as a combination to raise the price of a necessary or useful commodity in trade and to stifle competition.

The court said:

"Undoubtedly there may be combinations so destructive of the right of the people to buy and sell and to pursue their business freely that they must be declared to be void on the ground of public policy. In such cases *the injury to the public is the control-*

ling consideration. But it does not follow that every combination in trade, even though such combination may have the effect to diminish the number of competitors in business, is therefore illegal. Such a rule would produce greater public injury than that which it would seek to cure. It would be impracticable; it would forbid partnerships and sales by those engaged in a common business. It would cut off combinations to secure the advantages of united capital and economy of administration, and hamper the familiar conduct of business in many ways. There may be many such arrangements which will be beneficial to the parties and not injurious to the public. Monopolies are liable to be oppressive, hence are deemed to be hostile to the public good, but combinations for mutual advantage which do not amount to a monopoly, but leave the field of competition open to others, are neither within the reason nor the operation of the rule. *

* * * Here there is no monopoly. Three out of four of the companies in New England in this line of manufacture agreed to unite, one inducement being to stop the sharp competition then existing between them. But even so, not only is the field open to the other company, equal in strength to either of these, but it is also open to competition from companies in other parts of the country and to the formation of new companies. This is neither a monopoly nor such an approach to it as amounts to the same thing. It is the common occurrence of a consolidation of firms. It is not illegal on the ground of reducing competition."

THOMPSON, in his latest and most complete work on corporations, says (6400, 6401), that

"A voluntary dissolution of all competing companies and the formation of a single corporation under the statutes of some state, the new corporation becoming the purchaser of all the properties of the antecedent corporations and the shareholders in such corporations receiving shares in the new corporation upon the basis agreed upon in the scheme of such incorporation, is not an illegal act."

Of course the actual unification of what were properly distinct concerns differs from an agreement or combination of such distinct concerns made merely for the purpose of controlling prices and preventing competition. The law has placed no limit upon the amount of property which an individual or partnership may lawfully acquire or hold, nor is the individual subject to legal attack because the extent of his wealth is such that he may at times prevent competition or regulate prices. The same is true of corporations, with the qualification that their capital and the nature of their business is limited by their charters. When they keep within these limitations we can see no reason why the corporation may not acquire what the individual may acquire. We believe there are no well considered cases supporting a different conclusion.

The Act of the General Assembly of the State of Illinois relied on in the amended answer is as follows:

"If any corporation organized under the laws of this or any other state or country for transacting or conducting any kind of business in this state, or any partnership or individual or other association of persons whosoever, shall create, enter into, become a member of or a party to any pool, trust, agreement, combination or understanding with any other corporation, partnership, individual or any other person or association of persons to regulate or fix the price of any article of merchandise or commodity, or shall enter into, become a member of or a party to any pool, agreement, contract, combination or federation to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this state, such corporation, partnership or individual or other association of persons shall be deemed and adjudged guilty of a conspiracy to defraud and be subject to indictment and punishment as provided in this act."

By subsequent sections fines are imposed for the violation of the act, and contracts or agreements in violation thereof, are declared void.

Of course, the above act, if it affected the validity of the mortgage in suit, could only affect it as to properties situated in the State of Illinois.

While that law prohibits, as did the common law, individuals and corporations from entering into pools, trusts, combinations, confederations or agreements of distinct parties to accomplish the inhibited purpose, it does not prohibit individuals or corporations from acquiring by actual purchase any number of properties.

That law has received a construction in the courts of Illinois, but not such a construction as appellants contend for in this case.

The Illinois cases are as follows:

Craft v. McConoughy, 79 Ill., 346.

That was the case of a combination of several different individuals to control prices.

People v. Chicago Gas Trust Company, 130 Ill., 268.

This was an information in the nature of *quo warranto* by the attorney-general against the defendant, a gas company which had acquired a majority of the stock of *all* the gas companies doing business in Chicago, and which controlled, or was in a position to control, such business. It was held that such a corporation organized to manufacture and sell gas, had no charter power to purchase or sell shares of stock in other gas companies, even though such power was specified in its articles of incorporation; that the control by said company of the four remaining

companies, outside and independent corporations, actually suppressed competition between them and created a virtual monopoly and was illegal. The case was where the gas company, by its purchase of stock, controlled all the gas companies. The court said (p. 301):

"When the four gas companies entered the streets of Chicago, they assumed the performance of the public duty of furnishing light to the inhabitants; that they should be permitted or required or forced to abandon the performance of such public duty is against the policy of the law. The public duty is imposed upon each company separately, and not upon the four when combined together. Each for itself, when it accepted its articles of association, assumed an obligation to perform the objects of its incorporation, but the appellee through the control which it does or may exercise over the four companies by reason of its ownership of a majority of their stock renders it impossible for them to discharge their public duties, except at the dictation of an outside force and in the manner prescribed by a corporation operating independently of them. They are thus virtually forced to abandon the performance of their duty to the public; the freedom and effectiveness of their action in carrying out the purposes of their creation are seriously interfered with, if not actually destroyed. A power whose exercise leads to such a result cannot be lawfully entrusted to any corporate body."

Ford v. Chicago Milk Shippers' Association,
155 Ill., 166.

There a corporation was formed for the purpose of regulating the price and the quantity of milk sold. The plan as the court stated it was this:

"Appellee receives milk from members and accounts to them for the same; guarantees payment to members; fixes and determines the price of milk; retains five cents upon each can of milk sold for

each year; has authority over all milk consigned by any of its members to any stand within the corporate limits of the City of Chicago; a member cannot sell his stock except to a shipper and producer of milk, and must own as many shares as he ships cans of milk per day, but not to own more than fifty shares of stock."

Here was a combination between the corporation and fifteen hundred milk producers who became members of the association and agreed to be bound by its rules.

The Distilling and Cattle Feeding Company v. The People ex rel., 156 Ill., 448.

This was a proceeding by *quo warranto*. This company was preceded by an unincorporated association called "The Distillers Cattle Feeding Trust," which was a combination between the various distilling companies of the country to pool their interests through trustees, who held all the stock of all the corporations engaged in such business. The trustees obtained possession of nearly all the distilleries and of nearly the entire distilling product of the United States, dictated prices and the amount of production, and thus drew to themselves the substantial control of the distilling business of the country. Their scheme was in fact intended to and actually did control prices, destroy competition and create a monopoly.

These trustees organized themselves into a corporation and subscribed for all the stock. The court said:

"The trust, then being repugnant to public policy and illegal, it is impossible to see why the same is not true of the corporation which succeeds to it and takes its place. The control exercised over the distillery business of the country—over-production and prices—and the virtual monopoly formerly held by

the trust are in no degree changed or relaxed, but the methods and purposes of the trust are perpetuated and carried out with the same persistence and vigor as before the organization of the corporation. There is no magic in a corporate organization which can purge the trust scheme of its illegality, and it remains as essentially opposed to the principles of sound public policy as when the trust was in existence. It was illegal before and is illegal still, and for the same reasons. * * * Defendant's power to acquire and hold property is limited to that purpose, and it has no power by its charter to enter upon a scheme of getting into its hands and under its control all or substantially all the distillery plants and the distillery business of the country for the purpose of controlling production and prices, of crushing out competition and of establishing a virtual monopoly in that business. Such purposes are foreign to the powers granted by the charter."

An examination of the cases in Illinois courts since the passage by the Illinois legislature of its act relating to trusts, pools, etc., shows that combinations of different persons, partnerships and corporations to regulate prices and output and to prevent competition are illegal, and that corporations which succeeded to such illegal combinations, and which actually created monopolies, regulated prices and destroyed competition, exceeded their legal powers under the laws of Illinois relating to corporations, and were illegal.

It does not appear that a corporation which under charter authority has purchased a number of other corporations engaged in a like business and has unified the properties into a single ownership, and which has not and cannot regulate prices, destroy competition or create a monopoly is illegal under the common law or that of Illinois.

Appellants cite cases which may be grouped into two classes, each of which is wholly dissimilar to the case before the court:

1. Where there was a pool between different companies or individuals engaged in the same business, the object of which was to regulate output, control prices and prevent competition. The following are cases of that class.

Craft v. McConoughy, 79 Ill., 346.

Gibbs v. Gas Co., 130 U. S., 396, 9 Sup. Ct. R., 553.

People v. North River Sugar Refining Co., 54 Hun., 354, 7 N. Y. Supp., 406.

People ex rel. v. Chicago Gas T. Co., 130 Ill., 268.

Pittsburgh Carbon Co. v. McMillan, 119 N. Y., 46.

Emery v. Candell Co., 47 Ohio State, 320-324, N. E. 660.

Mound River Coal Co. v. Barclay Coal Co., 68 Pa. St., 173.

Arnot v. Coal Co., 68 N. Y., 558.

India Bag Association v. Koch, 14 La. Ann., 168.

2. Where the corporation was organized to control prices, regulate output, destroy competition and create a monopoly, and *had succeeded in doing so*. The following are such cases:

Distilling and Cattle Feeding Co. v. People, 156 Ill., 448.

State v. Nebraska Distilling Co., 29 Neb., 700, 46 N. W., 155.

Richardson v. Buhl, 77 Mich., 632, 43 N. W., 1, 102.

Before the court can declare the Columbia Straw Paper Company an illegal combination, it must go much further than did these adjudications invoked by appellants.

No case has yet declared that a partnership formed to conduct a certain business is illegal because the respective partners had previously prosecuted independently the same line of business.

No case has held that the purchase by an individual, a firm or a corporation of the stock or plant of another engaged in the same line of business is against public policy or is forbidden by law.

And no court has yet held that the purchase by one of a number of competing plants, and their unification into a single business is, of itself, a violation of the law, especially if the extent of such purchase was so limited that it could not and did not regulate prices, thwart or check competition or approximate to a monopoly.

The Columbia Straw Paper Company was organized in 1892. A corporation known as the "Paper Commission Co." was organized in 1894, for the manufacture and sale of every kind of paper and a large number of other purposes. (Rec., 410.) Appellants urge that some of its directors were directors in the Columbia Straw Paper Company, and that the object of such Paper Commission Company was to regulate prices and prevent competition.

It is not shown that it undertook to accomplish or did effect any such purpose. At any rate its creation was long after the execution of the bonds and mortgage by the Columbia Straw Paper Company, and the bondholders, whose interests are represented by appellees, can not be affected by its purpose or its acts. A corporation

can not escape liability upon its bonds by its subsequent commission of illegal acts.

It may likewise well be argued that whatever may be said as to the legality of the organization of the corporation, its illegality would not affect the validity of the mortgage, a collateral instrument, or enable the corporation and its stockholders to defeat the just claims of its bondholders who are creditors.

The case in this aspect seems to be governed by the principle of a number of well considered authorities.

Sharp v. Taylor, 2 Phillips Ch., 801.

McBlair v. Gibbes, 17 How., 232.

Brooks v. Martin, 2 Wall, 70.

National Distilling Co. v. Cream City Importing Co., 86 Wis., 352-355.

Dennehy v. McNulta, 86 Fed. Rep., 825-827.

The main question in this case is, whether there is a liability on the part of the bondholders, as stockholders, which can be set off against the bonds in this proceeding. Respondents deny such liability on the following grounds:

IV.

No rights of creditors are involved in this suit.

Appellants are not creditors, nor do they, or could they, appear on behalf of creditors. No creditor is a party to this proceeding other than the bondholders, who are seeking through the complainant trustees to enforce their mortgage.

Hence, even were it conceded that there was a fraudulent overvaluation of the property acquired by the com-

pany, still we are relieved from the necessity of discussing what rights any *creditor* might have to institute and maintain a proceeding to enforce a liability of stockholders or to intervene in this proceeding.

Appellants intervened solely as minority *stockholders* to defend, on behalf of themselves or of the defendant corporation, against this foreclosure proceeding.

V.

There was, under the contract whereby the company delivered to Stein its stock and bonds in return for the lands described in the option contracts, no fraudulent overvaluation of the properties, and hence all the stock of the company was fully paid.

To establish a fraudulent overvaluation, a *fraudulent intent* must be shown, or a gross and obvious overvaluation must be proved.

Coit v. Gold Amalgamating Co., 119 U. S. 143.

This was an action by a *creditor*. This court sustained a decree dismissing the bill.

It said:

“ If it were proved that actual fraud was committed in the payment of the stock and that the complainant had given credit to the company from a belief that its stock was fully paid, this would undoubtedly be substantial ground for the relief asked. But where the charter authorizes capital stock to be paid in property, and the shareholders honestly and in good faith put in property instead of money in payment of their subscriptions, third parties have no ground of complaint. The case is

very different to that in which subscriptions to stock are payable in cash and where only a part of the installment has been paid. In that case there is still a debt due to the corporation, which, if it becomes insolvent, may be sequestered in equity, by the creditors, as a trust fund for the payment of their debts. But where full-paid stock is issued for property received, there must be actual fraud in the transaction to enable creditors of the corporation to call the stockholders to account. A gross and obvious overvaluation of property would be strong evidence of fraud."

Bank of Fort Madison v. Alden, 9 Sup. Ct. R., 332.

In that case a number of persons owning timber land formed a corporation for the manufacture and sale of lumber, and the lands were conveyed to a trustee for the benefit of the corporation according to an agreement by which each member was to receive stock in proportion to his individual interest in the lands, the trustee accepting such lands in full payment of the shares issued. It was held that even a *creditor* of the corporation, having full knowledge of the facts, could not enforce a liability against a stockholder on the ground that the land conveyed by him was worth much less than the stock received therefor, and that therefore he was indebted to the corporation.

The court, FIELD, J., says:

"The bill was framed upon the theory that the deceased was at the time of his death indebted to the company in a large amount for the stock issued to him, it being contended that the cash value of the lands conveyed to the trustee for that stock did not exceed forty per cent. of the amount subscribed, but this theory falls to the ground before the facts of the case as detailed above. The parties who became stockholders had, pursuant to a previous

agreement, conveyed their lands to a trustee in trust for the corporation formed, upon an understanding that stock should be issued to them in proportion to their individual interests in the property. The subscription was made upon this arrangement and the parties acted with full knowledge of the conditions on which the property was to be transferred to a trustee and the stock was to be issued to them. There was no attempt to pass off the property as different or more valuable than it was. There was no deception or misrepresentation of any kind in the case. No demand therefor against the estate of the deceased Waterman can be sustained upon the assumption that by the conveyance of his land he had not paid up all that he had contracted or was bound to pay by his subscription. There was no credit given by the bank to the company upon the representation of a different set of facts than that which actually existed. The bank was owned by two of the stockholders of the company, Brewster and Smith, who had participated in and had been well advised of all that was done by the company. They held all the shares of the bank and were respectively its president and cashier. Such being the case, the answer to the claims of the bank is found in the decision of this court in

Coit v. Amalgamating Co., 119 U. S. 343."

The court after commenting upon the latter case, say:

"Under this authority no foundation is laid for calling upon the estate of the deceased to pay anything more for the stock issued to him than was paid."

It is well settled that in order to invalidate an issue of stock, which is issued for property taken at an overvaluation, it must be shown not only that there was an overvaluation, but also that such overvaluation was intentional and consequently fraudulent.

1 Cook on Stockholders, Sec. 35.

2 Thompson on Corporations, Secs. 16 and 18
and cases cited.

Gamble v. Queens County Water Company, 25
N. E. Rep., 201.

Young v. Erie Iron Co., 31 N. W. Rep., 814.

Bickley v. Schlag, 20 Atl., 250.

What the company received for its stock and bonds was not only the individual mill properties, but in addition, was the labor and expense necessary in harmonizing the interests of the mill owners, in procuring the mill plants, and their good-will, and converting them into a single organization. Such a consolidated industry might be vastly more valuable than the aggregate of the prices at which the mill owners were willing to sell their plants. A belief in such greatly enhanced value was the only motive which prompted the mill owners and the other parties engaged in promoting the transaction to endeavor to accomplish it. The owners had a legal right to transfer their properties to the new corporation, not merely at the aggregate of their separate market values, but *plus* all promotion expenses, and the cost and expense attending the entire transaction, and so as to leave a fair profit for themselves, and to those who aided them in promoting the undertaking. They had a right to transfer them on the basis of their probable earning capacity when consolidated into a single organization.

If the earning capacity of the aggregated properties would pay six per cent. on a bonded debt of one million dollars, would retire one hundred thousand dollars of bonds annually, would pay eight per cent. in the preferred stock of one million dollars, and more than five per cent. on the three million dollars of common stock,

or, if the parties engaged in the plan, as reasonable men, honestly believed in such a state of facts, then there was no fraudulent overvaluation. These parties represented and were enthusiastic in their opinion (Rec., 588), that as the annual sale of straw paper had been ninety thousand tons a year, and was increasing ten thousand tons per annum, that the company could control a large part of the trade, and could sell that amount, or nearly that amount each year; that as paper had been manufactured at a cost of \$18 per ton, the company with increased facilities for economic management by systematizing the purchase of straw, with facilities for making paper, and savings on rent and management, could produce it for \$16; that as the average sale price for a term of years had been more than \$26, the company could sell for \$26 a ton. If the company could manufacture and sell 50,000 tons annually at such rates, it could pay five per cent. on the common stock after paying interest on the bonds, dividends on the preferred stock, and retiring annually \$100,000 bonds.

If their beliefs or anticipations were well founded, there was no overvaluation. If they honestly entertained them, there certainly was no fraudulent overvaluation. There is evidence that such were their beliefs. There is no evidence that they did not honestly entertain them; none that in the then condition of affairs they were oversanguine, or that they were not, as intelligent men, justified in their expectations.

Appellants, upon whom rested the burden of proving overvaluation, merely proved the prime cost of the mills and contended that a capitalization beyond such cost was to the extent of such excess, a fraudulent overvaluation. They omitted from consideration all cost of

promotion, the expense of consolidation and reorganization, all the enhanced earning capacity, and hence increased value of the consolidated industry. Practically conceding the good faith of all parties in their belief in the earning capacity of the company, they introducing no evidence tending to show that such belief in the then situation of business was not justified; not denying that they joined in such belief, they still unreasonably insist upon an overvaluation.

Gamble v. Queens Co. Water Co., 123 N. Y., 91; 25 N. E. Rep., 201.

In the above case it was held that the true inquiry in determining whether or not the price paid by a majority of the stockholders of a corporation for property was so excessive as to be a fraud on the minority was what, under all the circumstances, was a fair value of the property to the company, considering its proposed use and the general purpose for which the company was organized. In determining this question, where the property had been conveyed by the company to a director, and a minority of the stockholders were seeking to have the conveyance set aside as having been conveyed at a fraudulent overvaluation, it was held proper to take into consideration the value of the time, interest on the money which the director had expended thereon, and to this might be added its cost, and he might in addition be allowed a fair profit thereon and whatever advantage he might have gained on the price of the materials used; that an order by a majority of the stockholders of a corporation to pay an excessive sum for property purchased by it in stock and bonds was not to be condemned as fraud, unless the majority acted in bad faith, on which

question the probable or presumptive value of the property might be considered.

Where the owners of properties arrange to convey them to a corporation to be formed, there is no fraud whatever in capitalizing the corporation upon the basis of the earning capacity of the consolidated properties, irrespective of the aggregate of the sums at which the individual properties could be purchased.

Nor is the fact that the parties were disappointed in their expectations at all conclusive of the unreasonableness of their belief.

That the financial depression of 1893 would occur soon after organization and would almost extinguish the demand for straw paper and send the selling price below the cost of production, was no more to be foreseen and counted upon by those connected with this undertaking, than by the thousands of persons and corporations throughout the country engaged in other industries and enterprises which were wrecked in the same panic.

The property is not to be considered as over-valued merely because subsequently it turns out to be so. The various circumstances under which the valuation was made should be considered in determining the *bona fides* of the transaction.

1 Cook on Stockholder, Sec. 35.

In *Coit v. N. C. Gold Amalgamating Co.*, 14 Fed. Rep., 12, the court said :

"Corporators ought not to be made liable individually for the debts of the company at the instance of creditors because at a later date the estimate fairly put upon the property at that time, has become modified by subsequent events and will not amount to the value which they set upon it."

On appeal this court in affirming the judgment below, 119 U. S., 343, said :

"Where full-paid stock is issued for property received, there must be actual fraud in the transaction to enable creditors of the corporation to call the stockholders to account."

In *Carr v. LeFevre*, 27 Pa. St., 113, the court said that:

"If the directors took lands at a prospective value never realized, it is nothing more than many individuals and corporations have done before. Such an error in management or in their judgment of the value of a purchase made without fraud affords no ground for rescinding the contract."

Where a mine is turned in at a large valuation for stock no fraud is proved by the mere fact that the mine subsequently turned out not to have been worth over one-fifth of that amount. Fraud exists only when intentional overvaluation, or such a reckless conduct in the placing of its value without regard to its real worth as would indicate without explanation an intent to defraud.

Young v. Erie Iron Co., 31 N. W. Rep., 814.

In determining whether the company issued its stock for less than its par value, the contract providing for such issue and the acts of the company thereunder must be judged as of the time when the contract was made and the stock was issued, the "value" of the property transferred contemplated by the act being its value at the time of the transaction.

Huntington v. Attrill, 118 N. Y., 355.

Prospect Park R. R. Co. v. Coney Island R. R. Co., 144 N. Y., 163.

At the time when the contract between Stein and the

company was entered into, there is no doubt that all parties justly believed that the property transferred was fairly worth the amount of stock and bonds issued therefor. What Stein agreed to pay for it was no measure of its value. Such value was enhanced by the fact that he had not a single plant, but a large number of plants which could be operated economically and profitably. The statistics of the business, the data which were conceded by all who had any knowledge of the industry, seemed to establish to a demonstration the fact that the earning capacity of the property which Stein controlled was such as to insure the conservativeness of the valuation which he placed on the property and which the company agreed to pay. Subsequent events, which could not have been anticipated, a rival product theretofore unknown, a financial panic of a most disastrous character, a series of disappointments, the curtailment of the market, prevented the realization of the just expectations of all concerned, but that fact in no manner affects the *bona fides* of the capitalization of the company, or warrants a rejection of the findings of fact which have been approved by the courts below.

Stein asserted that the property which he controlled was equal in value to the par value of the bonds and stock received therefor, and it is not likely that the company consented to pay him more than it considered it reasonably worth.

As was said by Mr. Justice HAIGHT in *VanFleet v. Jones*, 75 Hun., 340:

"It is natural that the owners of property taken by a corporation of which they are stockholders, and in payment for which stock of the company is to be issued, should desire to realize for their property all that it is worth, and the statute is not violated with

respect to the issuance of stock in payment for property unless such persons in bad faith put a fictitious value upon their property for the purpose of evading the statute and defrauding others."

There is an unbroken line of authorities in support of the proposition that, even as to creditors, where stock has been issued for property in good faith to an amount which the directors believed to represent its actual value, the provisions of a statute similar to that of New Jersey, under which this stock was issued, will not be deemed to have been violated, even although it eventually develops that the property was worth much less than was supposed, or even where it turned out to be of no value whatever.

In *Schenck v. Andrews*, 57 N. Y., 133, it was held that mere mistake or error of judgment by trustees, either as to the necessity of the purchase or as to the value of the property purchased; for which stock is issued, if made in good faith and not in evasion of the provisions of the act, will not subject the holder of stock issued in payment for property purchased to liability for the debts of the corporation.

LOTT, Ch. C., said:

"There are many circumstances that affect values. The time of the purchase, the demand for the article sought for, a limited supply, the credit given, a panic in the money market, and various other matters have their influence and effect, and which cannot be properly appreciated at a remote day after these causes have ceased to operate. An illustration may be given by reference to the difference in the prices of articles needed in the late war and the present time. Indeed, our experience shows that the prices are more or less fluctuating, even at short intervals of time, and different juries would be very

likely to disagree on the same evidence as to the value of an article on a specified day two or three years previous to the time they were called to pass on the question. * * *

"Every person who deals with it (the corporation) has the means of ascertaining whether its capital has been paid in money or in property, and he is under no obligation to sell it any goods if he finds that it, or any portion thereof, has been paid in property. Due prudence and care on his part will enable him to ascertain its nature and value, and if he should be induced to hazard a sale of goods on credit, instead of money paid down, by high profits, he has no right to ask a court for relief from the consequence of his avarice or folly in making a sale, without payment at the time of the price agreed upon."

The statute gives the trustees discretion, and they are to be the judges, both as to the necessity for and the value of the property. Good faith and the exercise of proper discretion and honest judgment is all that is required.

REYNOLDS, C., said:

"I entirely agree that if the promotors of a corporation of this character shall, with a view to defraud, fill up the capital stock by putting in property at grossly exorbitant values, they are not to be exempted from the personal liability imposed by the statute. In such cases they ought to respond in damages to the extent of the wrong they design to accomplish. But, if in the furtherance of an honest purpose, they fall into an error of judgment in placing a pecuniary value upon property supposed to be needful for the success of the enterprise, I think a different ruling should prevail. And I think it need only be suggested in support of this position that upon the question of the value of property, and more especially that adapted to mining, mechanical and manufacturing purposes, a very wide difference

of opinion may honestly exist among the most intelligent of men familiar with such operations. There is no exact mathematical value which can be applied to mines or minerals in the bowels of the earth, or to mechanical contrivances or manufacturing establishments, when their development is sought for by associated wealth. It is matter of honest observation that the most intelligent and conscientious of men upon such questions entertain widely different opinions; and it would be a fatal blow aimed at every such enterprise if those who honestly risk their capital in such enterprises shall be held as guarantors to all creditors for its eventual success."

In *Boynnton v. Andrewes*, 63 N. Y., 93, the last case cited was approved, and Judge MILLER said:

"The words 'value thereof' evidently mean a fair valuation of the property, considering the purposes for which it is to be used, the nature of the business for which it is purchased, and for the prosecution of which the corporation is organized. This rule authorizes an extended and wide latitude in the determination of the question of value. While certain kinds of property which are employed for manufacturing purposes, such as machinery, fixtures, etc., have a specific and definite value which is readily ascertained and fixed, there are other descriptions of property where the value is dependent upon circumstances which render it quite uncertain and frequently very difficult to decide what the real, fair and just value of the same actually is. Mines and mining lands may properly be considered as embraced in the latter class, as their intrinsic value is fluctuating and uncertain, and depends to a very great degree upon their successful development. It, therefore, may well be that an honest over-valuation might be made of property of this kind or agreed upon, without a semblance of intentional fraud. So, also, an error in judgment, or a mistake in placing a valuation on property appropriated as capital by a manufacturing company, if made in good faith and not to evade the provis-

ions of the act in question, would not of itself subject the owner of stock issued in payment of the property issued to personal liability. * * * A discrepancy in the opinions of witnesses upon the question of values can not be considered as sufficient to establish fraud so as to render the stockholder individually liable."

In *Douglas v. Ireland*, 73 N. Y., 100, the rule as laid down in the preceding cases was approved, and it was held that, to establish fraud which would take stock issued for property out of the purview of the statute it was necessary to prove: 1. That the stock exceeded in amount the value of the property in exchange for which it was issued. 2. That the trustees of the corporation so issued it deliberately, and with knowledge of the real value of the property.

In *Lake Superior Iron Co. v. Drexel*, 90 New York, 87, a corporation was organized with a nominal capital of \$2,500,000. A proposition was made to its board of trustees to sell to it certain patents and properties for \$2,500,000, and to receive in payment the whole of the capital stock, the vendors, however, to deliver \$900,000 of the stock to the trustees, \$600,000 thereof to be sold at fifty per cent. of its par value, \$50,000 of the purchase price to be paid to the vendors, and the balance to be paid over to the treasury of the company for its use. This proposition was accepted and carried out. The defendants subscribed and paid for five hundred shares of the stock at fifty dollars per share. In an action brought for the company's debts several trustees testified that they acted in good faith in the transaction, and believed the property purchased to be worth \$2,500,000. The verdict of the jury, to the effect that the purchase and issue of the stock was in good faith, was sustained.

In *Skinner v. Smith*, 134 N. Y., 240, the original capital stock of the company was \$40,000, and was issued to the defendants, the owners of certain letters patent relating to the manufacturing of carpets by machinery in consideration of a license for the use of the invention. Subsequently the license was reconveyed to the defendants, who surrendered the stock issued therefor. The stock of the company was then increased to \$600,000, all of which was issued to the defendants, they paying therefor \$250,000 in cash, and for the residue granted to the corporation a license to manufacture under the patent on payment of a specified royalty. This transaction was found by the court to have been in good faith, and with no intent to defraud any future holder of the stock, and was, therefore, legal.

The case of *Lorillard v. Clyde*, 86 N. Y., 384, involved the validity of an agreement between competitors in the transportation business by water for the formation of a corporation with a capital of \$300,000, to be represented by the property of the two contracting parties. It was claimed that the agreement was illegal, because it was provided that the property should be taken to represent the whole of the capital at the valuation fixed by the parties. Judge ANDREWS, however, said:

" We have not been referred to any statute which prohibits the organization of a corporation of the character of the one contemplated by this agreement on the basis of chattel property contributed by the corporators. It cannot be assumed that the transaction was not *bona fide*, or that the valuation on the vessels was fictitious or extravagant. The value of the stock would depend upon the value of the *property and business*.

" The parties fixing the valuation were the only

parties interested, and we know of no principle of public policy which condemns an agreement between parties about to form a corporation, because by the arrangement the capital stock is to be represented by property which they severally contribute, at a valuation agreed upon between themselves."

In *Stewart v. St. Louis R. R. Co.*, 41 Fed. R. (Neb.), 736, where a railroad road-bed worth \$2,000 was turned out to a corporation for \$200,000 of its notes and \$3,600,000 of its stock, it was held that the notes could be collected.

In *Northwestern Mutual Life Ins. Co. v. Cotton Exchange*, 75 Fed. R., 155, it was held that a purchaser of stock in a Missouri business corporation may pay therefor in real estate, subject always to the scrutiny of the courts into the honesty of the value placed upon real estate. If this value be fixed in good faith, although it should subsequently transpire to be greatly excessive, the courts will not disturb the arrangement. There a building company having invested \$88,000 in a building, sold it to a new corporation for \$125,000 stock and \$75,000 in bonds. The property brought \$50,000 on a subsequent foreclosure, and creditors sought to enforce a stockholders' liability and failed. Mr. Justice PHILLIPS said:

"Good faith and honesty of purpose are the tests. If the real estate transferred for the stock in the new corporation was honestly believed by the parties to the transaction, to be equivalent in value to the face of the stock issued, a creditor of the corporation may not assail the transaction, although it should subsequently transpire that the property in fact was overvalued."

Even the authorities which are sometimes cited to sustain a stock liability toward *creditors* on the ground of

the *mala fides* of a stock issue, do not affect our position, but, on the contrary, sustain it.

We refer to

Huntington v. Attrill, 118 N. Y., 365.

National Tube Works Co. v. Gilfillan, 124 N. Y., 302.

In *Huntington v. Attrill* (*supra*), the statute under which the corporation was formed differed in phraseology from that applicable here. It prohibited the issuing of stock for property, except for "property actually received for the use and legitimate purpose of said corporation at its fair value." The action was brought against the defendant as a director to enforce liability for a debt of the corporation, because of the signing of a false certificate. The alleged false representation was that the whole capital stock, amounting to \$700,000, had been fully paid in. All of the stock was issued to the defendant in payment for 120 acres of land on the seashore, which he conveyed to the corporation subject to a mortgage of \$72,000, the payment of which was assumed by the company. This land was part of 140 acres purchased by the defendant six months before the organization of the company, and in contemplation thereof, for \$80,000, of which he paid \$8,000, and gave the mortgage for \$72,000, which was afterwards assumed by the corporation to secure the balance. His total cash investment, therefore, was \$8,000, for which he retained 20 acres of land, and received \$700,000 in stock. The land had no known market value at that time, or any intrinsic value of large amount. Extensive improvements were made upon the property, which was afterwards sold at a judicial sale for \$175,000, after the

corporation had incurred liabilities to the amount of \$994,000. Within four months after the formation of the corporation it was in the hands of a receiver. The court, nevertheless, charged the jury that *they had the right to consider, in determining the fair value of the property, its value for the use to which it was to be put, and the adaptability of it to any specific purpose*; that these were constituent elements of intrinsic value, and, although the value to be ascertained by the jury was that, at the time of the sale and conveyance of the company, any peculiar advantages known or unknown, which, even if known, would make it advantageous to a few only, properly enter into consideration, and go to make up the value as of that time.

Judge BRADLEY approved of this charge and said:

"The fair value contemplated by the statute is that which the property had at the time of the sale, and which constituted the consideration upon which the subscription to the capital stock of the company was satisfied. Then was the time the estimate of the value must for that purpose be deemed to have been made. It could not be dependent upon subsequent successes or failure of the investment further than such result may have been legitimately within evidential contemplation at the time of the sale in view of the uses for which it may have had available advantages within itself."

The property for which the stock was in that case issued had no established earning capacity, was a barren stretch of sand, distant from all habitations, represented practically no investment whatever on the part of the individual to whom the entire capital stock was issued for a shadowy equity.

In *National Tube Works Company v. Gilfillan* (*supra*) the corporation issued \$300,000 of stock for the transfer

of a lot of unpatented inventions to one Bliven. Two corporations had been previously organized with the defendant as a trustee in each to handle these inventions. One had merely a paper existence, the other was a disastrous speculation, and the third corporation became hopelessly insolvent in less than a year after its organization. Immediately upon the formation of the corporation \$100,000 of the stock was surrendered to the corporation, \$50,000 were received by the defendant in payment of a debt of \$15,000 owing to him by Bliven, \$5,000 were transferred in payment of another debt of Bliven amounting to \$2,500, and \$13,500 of stock was given away to qualify trustees and to induce them to act. The arrangement to thus dispose of the stock was made before the purchase by the corporation and was part of the transaction. The facts were known to all of the trustees. The court very properly inquired why, if these inventions were worth \$300,000, so large a proportion of the stock was given away for so small a consideration. The views of the court on the legal aspects of the case are presented by the following opening sentences of Judge VANN's opinion:

"The substantial issue in the action was whether the property procured in exchange for the stock was purchased at an overvaluation, not through error of judgment, but in bad faith and to evade the statute. The trial judge instructed the jury that if they found that the stock issued exceeded in amount the value of the property taken in exchange for it, and for which it was issued, and that the trustees deliberately and with knowledge of the real value of the property overvalued it and paid in stock for it an amount which they knew was in excess of its actual value, they must find for the plaintiff. If the jury do not find this to be the fact then they will find for the defendant."

In *Grant v. East & West R. R. Co. of Alabama*, 54 Fed. Rep., 569, it was held that the constitutional provisions in Alabama, forbidding the issue of stock or bonds except for value, and the statutory provisions requiring subscriptions to railroad stock to be paid ~~in~~ money, labor or property at their money value, does not prevent one railroad company from selling its property to another company for the bonds and stock of the later, and that the valuation placed upon the property might be *its net earning power*, and the cost of rebuilding it, irrespective of the original cost.

In *Commonwealth v. Central Passenger R. R.*, 52 Pa. State, 506, 515, passing upon the legality of an issue of \$500,000 of stock for a road that had just been sold under a mortgage for \$100,000, the court said:

"In all such cases the determination of the amount of stock must be an arbitrary adjustment. As we have stated, the cost of the property is no fair measure of what the stock represents; and if the real value be adopted as the standard, it is no standard at all. It varies with the estimates of witnesses, and the franchises are incapable of valuation. * * * If that was a sum greater than the actual value of the company's franchises and property, as it was greater than the cost, we are unable to see how the public was affected by the exaggerated estimate."

Carr v. LeFevre, 27 Pa. State, 413.

Fogg v. Blair, 139 U. S., 118.

Clark v. Bever, 139 U. S., 96.

Handley v. Stutz, 139 U. S., 417.

Danville R. R. Co. v. Kase, 39 Atl. Rep., 301.

Many additional cases might be cited to the foregoing effect, but it seems unnecessary to do so in view of the fact that there is not a particle of evidence presented im-

pugning the good faith of the directors of the corporation in issuing its stock or indicating that the property for which the stock was issued, was not fairly worth, or, at least honestly believed to be worth the par value of the stock.

Were this an action brought by creditors to establish the liability of stockholders of the company on the theory urged, it would be incumbent upon them to prove affirmatively, every fact and circumstance on which the right to recover depends. Nothing would be presumed. The burden of proof would rest upon them.

Whitney Arms Company v. Barton, 63 N. Y., 62.

Van Dyck v. McQuade, 86 N. Y., 38.

Whitney v. Cammann, 137 N. Y., 344.

"It will be observed that the transactions which are to be investigated to enable the plaintiff to establish these facts must have taken place at the time when the property was bought, and stock issued in payment for it, and the creditor is bound to establish that at that time there was an overvaluation to the knowledge of the trustees, by which the assets of the company were deliberately sacrificed. It follows that the evidence must be directed to the occurrences of that time, for those occurrences are the ones to be explained. *The plaintiff must show the value of the property at that time, and he must also show by competent evidence that the trustees, knowing the actual value, intentionally overvalued it and issued stock for it at the overvaluation.*"

RUMSEY, J., in *White v. Jones*, 86 Hun., 59.

Petitioners have dismally failed in sustaining this burden. On the other hand, it has been shown that no stock was issued except after a most careful consideration of the earning power of the plants acquired. It was

this earning capacity on which the greatest stress was laid. It was deemed to be the most important element of value. Here were thirty-nine established plants, each being a going concern, each having a valuable good-will attached to it, and each having not only the potentiality, but on the basis of known facts what seemed to be a certainty of realizing a profit which rendered the valuation placed upon the property extremely reasonable. To apply to this situation any *post hoc* argument, is to ignore the elementary laws of trade and the universal basis on which business operations rest.

It was said by Mr. Justice BREWER, in *Monongahela Co. v. U. S.*, 148 U. S., 328:

"The value of the property generally speaking, is determined by its productiveness, the profits which its use brings to its owners. Various elements enter into the matter of value."

See, also, *Washburn v. National Wall Paper Company*, 81 Fed. Rep., 17.

There being then no fraudulent overvaluation of the properties, the stock which Stein received was in fact and in law, as it purported to be, full paid and non-assessable. Being so full paid in his hands, it continued so to be in the hands of whoever received it from him, whether mill vendor, bondholder or other person.

The claim of appellants, that a stock liability on the part of bondholders should be set off against the bonds does not concern Stein, as he is not a bondholder. (Rec., 147, 347, *et seq.*) The bondholders represented by complainants below are here asserting that the stock which Stein received was fully paid, because if it be true, then all their stock was also full paid stock, since they received it from him.

VI.

The defendant corporation could not maintain an action or defense such as was set up by appellants.

In this case there was no stock subscription, and the only agreement between Stein and the company was that the company should convey to him its full paid stock and bonds, and that he should convey to the company the mill properties described in the option contracts and pay it \$250,000. The contract was fully executed by both parties. Either that contract is binding, which is the end of the matter, or it is voidable. In the latter case, it might have been promptly rescinded in an appropriate proceeding. If rescinded, the contract relations between the parties would end. Each must return to the other what he had received. If enforced, it must be enforced as made. It is an entirety. It cannot be enforced in part and rescinded in part. Neither a party or a court can substitute another contract in place of that actually made. If the corporation should desire and is entitled to rescind, it must return to Stein the thirty-nine mill plants and \$250,000. Stein must then return the stock or must pay its amount or value. But the *corporation* cannot say to Stein, "I will keep your property and your money, and you must pay what you never agreed to pay except in the manner you did pay."

When one subscribes for a certain amount of stock, and that must be paid for in money, or "money's worth" under a statute, the subscriber is bound by the contract, and it can be enforced against him. A subsequent contract that something else than the statute and the subscription contract called for shall discharge his former

contract is void, certainly as to creditors. But where there is but a single contract, and that is that the party will convey certain property in exchange for so much stock, as is the case here, that contract cannot be partly enforced and in part avoided by a party thereto. The corporation cannot enforce so much as is for its benefit and rescind so much as is opposed to its interests. This is fully sustained by the adjudications.

In 1 Cook on Corporations, Sec. 47, it is said:

"Many attempts have been made in cases where stocks were issued for property taken at an overvaluation, to hold the party receiving such stock liable for its full par value less the actual value of the property received from him. These attempts have not been successful, as already seen. The transaction is upheld as legal and valid and binding on all parties unless there is an overvaluation, and that overvaluation is shown to have been fraudulent. When this is proved, then the contract is to be treated like other fraudulent contracts. It is to be adopted *in toto* or rescinded *in toto*, and set aside. Both parties are to be restored as nearly as possible to their original positions. The property, or its value, is to be returned to the person receiving the stock, and he must return the stock or its real value."

It is also said (Sec. 38):

"The corporation itself, after issuing its stock as paid-up stock and declaring it so to be, cannot subsequently repudiate that declaration and agreement and proceed to collect either from the person receiving the stock, or his transferee, the unpaid part of the par value. It is estopped from so doing.

Where, however, actual fraud enters into the transaction, then the corporation is not estopped from having the agreement set aside. *The person receiving the stock can then be compelled to return the stock or its market value, and take back that which he gave to the corporation for it, but the cor-*

poration cannot hold him liable for the par value of the stock."

In *Scoville v. Thayer*, 105 U. S., 143.
the court said:

"The stock held by the defendant was evidenced by a certificate of full-paid shares. It is conceded to have been a contract between him and the company, that he should never be called upon to pay any further assessments upon it. The same contract was made with all the other shareholders, and the fact was known to all. As between them and the company it was a perfectly valid agreement. It was not forbidden by the charter or by any law of public policy, and as between the company and the stockholders was just as binding as if it had been expressly authorized by the charter.

If the company, for the purpose of increasing its business, had called upon the stockholders to pay up that part of their stock which had been satisfied 'by discount,' according to their contract, they could have successfully resisted such a demand. No suit could have been maintained by the company to collect the unpaid stock for such a purpose. The shares were issued as full paid on a fair understanding, and they bound the company.

In fact, it has been held in recent English cases that not only is the company, but its creditors also, are bound by such a contract.

But the doctrine of this court is, that such a contract, though binding on the company, is a fraud in law on its creditors, which they can set aside; that when their rights intervene and their claims are to be satisfied, the stockholders can be required to pay their stock in full.

The reason is, that the stock subscribed is considered in equity as a trust fund for the payment of creditors. * * * Considered in the view of a Court of Equity, the contract between the company and its stockholders was this, namely, that the stockholders should pay, say for example, \$20 per share on their stock, and no more unless it became neces-

sary to pay more to satisfy the creditors of the company, and when the necessity arose and the amount required was ascertained, then to make such additional payment on the stock as the satisfaction of the claims of creditors required.

When the company was adjudicated bankrupt the assignees were bound by this contract. Thus equitably construed their duty was to collect a sufficient sum upon the unpaid stock which, with the other assets of the company, would be sufficient to satisfy the company's creditors. They were authorized to collect no more. If it should turn out that the other assets were sufficient, no action would lie against the stockholder for the balance due on his stock, for if in a bankrupt proceeding any surplus remained after payment of debts, it would go to the company and not to the stockholders, and we have seen that the company in this case would have no right to any surplus. * * *

In this case there was no obligation resting on the stockholder to pay at all until some authorized demand in favor of the creditors was made for payment. He owed the creditors nothing, and he owed the company nothing save such unpaid portion of his stock as might be necessary to satisfy the claims of the creditors. Upon the bankruptcy of the company his obligation was to pay to the assignees upon demand such an amount upon his unpaid stock as would be sufficient, with the other assets of the company, to pay its debts. He was under no obligation to pay any more, and he was under no obligation to pay anything, until the amount necessary for him to pay was at least approximately ascertained.

But not only was it necessary that the amount required to satisfy the creditors should be ascertained, but that the agreement between the company and the stockholders to the effect that the latter should not be required to make any further payments on his stock should be set aside as in fraud to the creditors. No action at law would lie to recover the unpaid balance due on the stock until this was done.

* * * In the present case there was, as between the company and its stockholders, no obligation on the part of the latter to pay the residue of their stock unless it became necessary to satisfy creditors."

Foreman v. Bigelow, 4 Clifford, 508.

Here a mining corporation bought certain mineral lands and paid for the same in shares of stock, which were issued to the directors as paid-up stock. The lands were greatly overvalued. The corporation went into bankruptcy, and suits were brought by the assignee to recover the difference between the real value of the lands and the par value of the stock. Justice CLIFFORD said:

"Fraud does not render a contract void, but voidable only at the option of the party defrauded, both at law and in equity, whether the fraud was committed by one of the contracting parties upon the other, or by both upon persons not parties to the transaction, the rule being that where the fraud was committed by one of the parties upon the other, the contract remains operative and in force until it is disaffirmed by the injured party. * * * The bill of complaint seeks to enforce by respondents the payment of the entire capital stock of the company, or such portion of the same as may be necessary to pay the debts of the corporation, less the amount any particular holder of stock may have paid towards his shares. Three classes of shares were issued, as plainly appears from the allegations of the bill of complaint. 1. Shares to the amount of \$350,790 fraudulently issued to the directors in payment for the mining lands which they, at a greatly overvalued estimation, conveyed to the corporation. * * * Issued as these shares were to the directors in payment for the mining lands they were as between the grantors of the land and the directors issuing the shares fully paid up, as the shares paid for the land and the land conveyed paid for the shares, and all this appears from the books of the company. * * *

The complainant contends that such payment was made in mineral lands of a fraudulent valuation, not binding on the corporation. Admit that and still the fact remains that the land was actually received by the company in full payment for the stock, and that the shares were issued and delivered as fully paid up shares. Taken as a whole, the averments of the bill of complaint show that the transaction in purchasing the mineral land and in issuing the first class of stock in payment for the same, was a gross fraud upon the company which cannot be sustained; but it does not follow that the present suit against the respondents is a proper remedy to redress the injury, for the reason that the contract was duly executed by the execution of the deed of conveyance to the corporation, and by the issue of fully paid up shares by the corporation, for the whole amount of the agreed consideration of the mineral land.

Nothing can be plainer in legal decision than that the title to the mineral land passed to the corporation and that the title to the paid up stock passed to the directors. If formally executed the contract must stand until it shall be rescinded or the assignee, if he prefers that course, may retain what the company received for the stock and seek redress in damages against those who defrauded the corporation. And the redress is at his command, but he certainly cannot be allowed to disaffirm the contract only in part and affirm it as to the residue, as he must in order to maintain the present suit against the respondents. * * * Where there is a contract, even if fraud be imputed, the parties seeking redress must disaffirm the contract or proceed for damages against the perpetrators of the fraud. Such a party must throw over the agreement altogether, or he must take it as a whole. He cannot adopt it as to one part and reject it as to the residue."

Brandt v. Ehlen, 59 Md., 1.

In that case Mr. Justice Wood, delivering the opinion of the court, said (pages 153-4):

"The stock held by the defendant was evidenced by certificates of full-paid shares. It is conceded to have been a contract between him and the company that he should never be called upon to pay any further assessments upon it. The same contract was made with the other shareholders, and the fact was known to all. As between them and the company this was a perfectly valid agreement. It was not forbidden by the charter or by any law of public policy, and as between the company and the stockholders was just as binding as if it had been expressly authorized by the charter. If the company, for the purpose of increasing its business, had called upon the stockholders to pay up that part of their stock which had been satisfied by discount according to their contract, they could have successfully resisted such a demand. No action could have been maintained by the company to collect the unpaid stock for such a purpose. The shares were issued as full paid on a fair understanding, and they bound the company."

Phelan v. Hazard, 5 Dillon, 43-52.

In the above case Judge Dillon, in giving the opinion of the court, after commenting on cases where it was plain that the stock had been issued by the company for property of less value than the par value of the stock, said:

"The proofs show that the shares in question had been paid for precisely as they were originally agreed to be paid for, viz: by the conveyance of the mining property to the corporation. This conveyance had been received and recorded by the corporation. Unless this agreement is rescinded or set aside for fraud, how can it be said that the stock has not been paid for? The parties have agreed that it has been paid for, and that agreement is conclusive unless it is rescinded or impeached for fraud, and this can not be done unless the attack is directly made.

"The authorities establish that such a transaction is not *ultra vires*, and absolutely void. Second;

that the contract is valid and binding upon the corporation and the original share-takers, unless it is rescinded and set aside for fraud, and that where a contract stands unimpeached the court, even where the rights of creditors are involved, will treat that as a payment which the parties have agreed should be payment."

Coffin v. Ramsdell (Sup. Ct., Ind.), 11 N. E. Rep., 20.

This was an action by a receiver, on behalf of creditors, to collect, as unpaid subscriptions, the difference between what was claimed to be the actual value of property given by certain subscribers and received by the corporation in payment of their subscriptions, and the amount of the subscriptions, where there had been an over-valuation of property. It was contended that through such over-valuation the defendant was indebted for at least seventy-five per cent. of the stock subscription.

The court said:

"It is fairly inferable from the facts disclosed that at or subsequent to the incorporation of the company it was agreed between the directors of the corporation and the defendant that his interest in the property and assets of the firm of Unthank & Coffin should be transferred and accepted in full payment of his subscription to the stock of the Unthank Plow Company, and that it was so transferred and accepted. The *gravamen* of the plaintiff's case is, that because there was an over-valuation of the property the transfer and acceptance constituted as against subsequent creditors of the corporation payment *pro tanto* only. Assuming as receiver to represent the creditors of the corporation, the plaintiff in his official or representative character asserts the right to ascertain the real value of the property and assets transferred, and to recover from the defend-

ant the difference between such value and the amount subscribed by him as unpaid subscription.

It is to be noted that there is an entire absence of any charge or suggestion that the corporation was in any way misled or overreached by the defendant as to the situation or value of the property, nor does it appear that the transaction was merely colorable or a mere device on the part of the incorporators to absorb the capital stock of the corporation without making what was regarded and agreed upon as an equivalent in payment. The inference is that the Board of Directors, comprising all the stockholders, with full knowledge of all the facts, accepted the property and assets in question as payment, and without any fraudulent intent, consummated the transaction which stood without question until it was assailed by the receiver in the manner stated. It is to be observed, further, that this is not a suit to rescind or set aside the transfer and acceptance of the property, or any part of it, as fraudulent, nor is there any pretense that the transaction was *ultra vires* and void. From the frame of the complaint, and in all its distinctive features, the action is purely a suit at law to collect unpaid subscriptions to stock. Accepting the situation of the property as he found it, the receiver simply says that the only payment or pretense of payment which the defendant ever made of his subscription was in the manner stated, and that because the property taken in payment was knowingly overreached by the defendant and the other corporators, the difference between the actual value of the property and assets so taken and the amount of the defendant's subscription, remains unpaid * * * Does the fact that the property was received at an overvaluation enable the receiver to maintain his suit without impeaching or setting the transaction aside, if it can be set aside? No proposition can be plainer upon the facts as stated, than that the title to the property and assets which were transferred to the corporation passed to and remains in it, or in the receiver, and that the title of ownership of the stock thereby paid for vested in

the defendant. The transaction having been, so far as it appears, fully executed years before the receiver was appointed, may he permit it to stand, and now treat it as so far void as to ask for a new valuation of the property? May he disaffirm the contract in part and affirm as to the residue? We have been unable to discover any principle or well considered authority which affirms this proposition.

The principle deducible from the authorities already cited is, that even in case of an overvaluation of property transferred to the corporation in payment of shares, the transaction unless void for some reason, is binding so long as it is not impeached by the corporation or its assignee, and it can be impeached only for fraud upon the corporation. *Coit v. Gold Amalgamating Co.*, 119 U. S., 343; *Phelan v. Hazard*, 5 Dillon, 45; *Brant v. Ehlen*, 59 Md., 1. * * * A standard author concludes a careful and exhaustive examination of this subject thus: 'The whole discussion resolves itself into the following conclusions: A corporation may take in payment of its shares any property which it may lawfully purchase. Such a transaction is not *ultra vires* or void, but is valid and binding upon the original share takers and upon the corporation, unless it is rescinded and set aside for fraud. While such a contract stands unimpeached, the courts, even while the rights of creditors are involved, will treat that as payment which the parties agreed should be payment.' Thompson Liab. Stockholders, Sec. 134.

The contract not being void must be disaffirmed and set aside before the receiver can maintain an action at law as for unpaid subscriptions. * * * Patent rights and mining and manufacturing property which is embarked in enterprises is frequently valued by their owners and others at a prospective value which may or may not be realized, depending upon future contingencies. If the owners who put such values upon it act in good faith, and yet suffer disappointment, we can see no reason why they should suffer further unless they have been guilty of

fraud or concealment which has resulted in damage to others."

To the like effect are the following cases:

First Natl. Bank v. Guston, 42 Minn., 327.

Krohn v. Williamson, 62 Fed. Rep., 869.

Williamson v. Krohn, 66 Fed. Rep., 655.

Wells v. Green Bay Co., 90 Wis., 442.

Proctor Land Co. v. Cooke, (Ky.), 44 S. W. R., 391.

Granite Roofing Co. v. Michael, 54 Md., 65.

Re Ambrose, Lake Co., L. R., 14 Ch. Div., 390.

St. Louis R. R. Co. v. Tiernan, 37 Kan., 606.

Counsel for appellants ignore the distinction made in *Scoville v. Thayer*, *supra*, between actions by or on behalf of creditors and actions by the corporation or its stockholders. The following and other cases cited for appellants are cases in which the rights of creditors were asserted. They have no application in this case.

Lloyd v. Preston, 146 U. S., 630.

Webster v. Upton, 91 U. S., 65.

Patterson v. Linde, 106 U. S., 519.

Upton v. Tribilcock, 91 U. S., 44.

In re Hippenheimer, 36 Atl. Rep., 966.

Hebbard v. Southwestern L. & C. Co., 36 Atl. Rep., 122.

In *Hebbard v. Southwestern L. & C. Co.*, *supra*, the court recognizes and asserts the distinction made in *Scoville v. Thayer*. It says:

"As to the bonus stock, a contract between the purchaser of bonds and the company was that he should not be called upon to pay for the stock.

Such a contract is binding upon the company and its shareholders. But as the capital stock constitutes a trust fund for the payment of debts, it cannot be given away from the demands of *creditors*, and hence the holders of the bonus stock may be required to pay for it in satisfaction of their demands."

Dupont v. Tilden, 42 Fed. Rep., 87.

The corporation was authorized by its charter to buy land and pay for it in full-paid stock. It issued such stock in payment for the land to an amount greatly in excess of the value of the land, and the stock was sold to a purchaser for value. Held, that such purchaser was not liable to the creditors of the corporation on the ground that the stock was not fully paid for where there was no fraud in the original transaction, and the corporation has taken no steps to rescind it.

The court said:

"I think there can be no doubt from the proof in this case that the Coal Company agreed to give Taylor 7,000 shares of its stock for land which he conveyed to it. The question therefore arises, does the fact that complainant's testimony shows, or tends to show that this land was not worth in cash over \$150,000 at the time it was conveyed to the Coal Company, establish any liability as against these stockholders. There being no proof in the record aside from the resolution of the 18th of May, 1866, and the deed, of the negotiations and dealings between Taylor and the company, or of the circumstances surrounding the transaction leading up to it, I shall assume it as the only natural conclusion from the proof that Taylor offered to sell these lands to the company for 7,000 shares of its stock, and the company accepted the proposition. Taylor made the deed of the land to the company and the company issued to him the stock, or at least issued the shares now held by the defendant.

The question then arises, could the company have sued Taylor and recovered the difference between the cash value of this land and the par of its stock without first rescinding this contract, even if the land was not worth the par value of its stock? This question I think must upon reason and authority, be answered in the negative."

The court, after citing authorities, further said:

"It may, I think, be assumed as probable that the 7,000 shares of the stock of this Coal Company, issued to Taylor, were not worth in cash more than the land conveyed by Taylor to the company at the time this transaction took place, but the proof shows that since these lands were so conveyed the company has been engaged in mining coal from them, and hence it will be presumed that these lands were deemed valuable for coal deposits supposed or known to be beneath them, and it is well-known how prone men, and especially sanguine and hopeful men, are to over-value mining and coal lands, what high estimates are placed upon their future possibilities of value and development and the fair inference from the testimony in this case is that this Coal Company, with its valuable charter, was satisfied to accept these lands and did so accept them in full payment for its stock, in the expectation and belief that the full value of the stock was represented by these lands, and the fact that this expectation may have proved fallacious, although there is no proof to that effect in the record, furnishes no ground for the present claim of the complainants. They certainly have no higher equity than the company would have had against Taylor, and the company would have had no such equity, except for a fraudulent over-valuation, and that only upon a rescission of the contract, by a prompt re-conveyance of the land, so as to place Taylor in as good a position as he was when the transaction begun."

Assuming that the property transferred to the Columbia Straw Paper Company should be valued on the basis

of the results of the business carried on by it, then the appellants cannot prevail in their contention, since the sequel indicated that the stock was of no value whatever.

The company paid interest on its bonds for one year only. It was hopelessly insolvent at the time when the foreclosure action was instituted, although the record discloses no indebtedness save that represented by the bonds, or so much as was secured by them. The bonds represented \$1,000,000 in money furnished by the bondholders, all of which had been paid to the mill owners and the company. If speculation on the subject of value is the basis of appellant's argument, or may be indulged in for their benefit, it may well be said that there is no evidence that the actual value of the property which the mill owners transferred to Stein was greater than the cash which they received for it. That being represented by bonds, the stock stood for nothing, and especially where the interests of creditors are not involved it cannot be treated as though it represented its par value, nor can it be made the basis for the predication of any liability on the part of its holders for the company.

It is certain that at the time of the issuance of the stock, it had no market value. None, so far as appears, has ever been sold. The appellants have given no evidence of its real value. It was either validly issued to Stein as claimed by the respondents, or it had no value, if the appellant's contention be pressed to its logical conclusion.

Such being the case, even as against creditors no liability would arise out of the transaction of which peti-

tioners complain, and *a fortiori* no liability would exist as to the corporation or those representing it.

Fogg v. Blair, 139 U. S., 118.

Clark v. Bever, 139 U. S., 96.

Handley v. Stutz, 139 U. S., 417.

Union Loan & Trust Co. v. Road Co., 51 Fed. Rep., 840.

Smith v. Ferris Co. (Cal.), 51 Pac. Rep., 710.

The foregoing cases were proceedings by or on behalf of creditors of the insolvent corporation. The rules enunciated by the courts in those cases apply in much greater force where, as here, the proceedings are by the corporation or by a stockholder on its behalf.

The laws of New Jersey, under which this corporation was organized, provided that any manufacturing corporation might purchase any property necessary for its business, and issue stock to the amount of the value thereof in payment therefor, and that the stock so issued should be full-paid stock, not liable to assessment. (Sec. 55, Corporation Laws of New Jersey.)

VII.

As the defendant corporation could not assert the defense of set-off, or assert a stock liability, the appellants cannot do so on behalf of the company.

When the corporation has contracted to deliver and has delivered its full-paid and non-assessable stock in payment for properties, while it may enforce the contract as made, and in a proper case, rescind it, it cannot, as has been shown, make a new contract for the parties, and

cannot compel the stockholder to pay for his stock. Leaving creditors out of consideration, an action by the company against the stockholder is an act purely for the benefit of stockholders, and when, for the reasons given above, the company cannot enforce a different contract from what the parties made, the stockholder cannot enforce such different contract for the same stockholders, or for a part thereof. A stockholder may assert, on behalf of the corporation, a defense which the corporation might have asserted, but which it has improperly refused or neglected to assert, but he cannot maintain on behalf of the company a defense which the company could not maintain.

VIII.

Appellants as stockholders cannot maintain a proceeding to enforce payment by bondholders of their alleged unpaid stock for a fraudulent overvaluation since they participated and acquiesced in the transaction.

Stockholders in a corporation who participate or acquiesce in an issue of paid-up stock upon payment of less than its par value, or who have knowledge of the fact and acquiesce therein, cannot afterwards complain of the transaction, either in their own behalf or in behalf of the corporation. They are bound by estoppel or acquiescence.

1 Cook on Stockholders, Sec. 39.

Not only the participating and acquiescing stockholders, but also their transferees are bound by the participation or acquiescence. The transferee cannot claim to have greater rights than his transferer as regard a general remedy involving the whole transaction. He cannot bring suit on behalf of the

corporation against the party or parties participating in the issue inasmuch as his own title is tainted with the same fraud.

1 Cook on Stockholders, Sec. 40.

In *re Gold Co.*, L. R., 11 Ch. Div., 701-12, the court said:

"It could not be a fraud upon or a wrong to the existing stockholders because every one of them was a party of the transaction."

Hinckley v. Pfister, 53 N. W. Rep.,

The court says:

"As both the corporation and Hinckley participated in the unlawful issue of the bonds they occupy no position to ask the intervention of a court of equity, for they, neither of them, can make out a title to relief except by showing a plain and positive violation of the statute. They are in equal wrong with Pfister, to whom the bonds were issued."

1 Pomeroy's Eq. Juris., 461, 462.

By attempting to attack the good faith and honesty of purpose of the directors of the defendant company in issuing the stock, and questioning the validity of the issue, petitioners involve themselves in the accusation made, they having been active participants in the transaction, and the recipients of the benefits resulting from such stock issue. It is a most astonishing bit of brazenness that at the very moment when they attack the validity of the stock issue, they have safely stowed away in their pockets a large block of such stock which they persist in holding.

Callaman v. Windsor, 78 Iowa, 193.

Lewis v. N. Y. etc. Iron Co., N. Y. Law Journal, April 30, 1890.

Clark v. American Coal Co., 86 Iowa, 436.

A purchaser of stock that has voted for an issue of watered bonds and stock is estopped from complaining, even though the issue was prohibited by the constitution of the state.

Wood v. Correy R. R. Co., 44 Fed. R., 146.

So in the matter of Syracuse etc. R. R. Co., 91 N. Y., 4, Judge RAPALLO said:

" If it were true that an illegal election must be complained of and set aside in order to enable the court to compel an election, the complaint should be entertained only when made by some aggrieved party, who is not himself the author of the wrong complained of."

In *Barr v. N. Y., L. E. & W. R. R. Co.*, 125 N. Y., 373, Judge GRAY said:

" We may concede that the contract was voidable as a scheme concocted by the directors for sharing in the profits of construction. But the difficulty is that all the members of the corporation were assenting to it. There was, therefore, in fact, no fraud practiced upon the company. Practically the promoters of the corporation in this way placed a valuation upon the corporate properties and franchises, which the contribution and expenditure of their money created; and the fact that they were created for an expenditure less than the par value of the aggregate issues of stock and bonds does not affect the question at all. The stock so issued constitutes the only stock of the company, and is represented in the holdings of the plaintiffs and of this respondent. Their shares stand on precisely the same footing as to validity. The plaintiffs were parties to the construction contract, and the original holders of the respondent's shares received their stock in the same way and for the same considerations."

See also

Kent v. Quicksilver Mining Co., 78 N. Y., 159-188.

Parsons v. Hayes, 14 Abb., N. C., 419.

Langdon v. Fogg, 18 Fed. Rep., 8.

In *Thompson v. Bemis Water Co.*, 127 Mass., 595, a judgment creditor of a corporation, unable to enforce his judgment by execution, filed a bill in equity in behalf of himself and all other creditors against the corporation and certain stockholders to enforce the personal liability of the latter on the ground that the capital of the corporation had been withdrawn and paid to the stockholders. He had at the time contracted for eight shares of the stock, paid for them in part, and voted as owner at meetings of the stockholders. At one of these meetings a considerable portion of the cash assets of the company was withdrawn from its capital and divided among the stockholders in the proportion of the old amount of stock held by them respectively. The plaintiff was present and voted in favor of the division.

Upon these facts it was held that the bill could not be maintained, since he could not make the act which he had favored and voted for a ground for charging the stockholders with personal liability for a debt due from the corporation to himself.

Chief Justice GRAY, speaking of the complainant's attitude, pointedly said:

"He now seeks to make the very act which he as a stockholder took part in bringing about, and in reaping the benefit of, the ground for charging Warren and other stockholders with personal liability upon a bill in equity for a debt due from the corporation to himself. This cannot be permitted."

The principle of this case was applied in *Bank of Fort Madison v. Alden*, 129 U. S., 372, where it was cited with approval by Mr. Justice Field. There, a stockholder in an insolvent corporation, who had paid his stock subscription in full by a transfer of a tract of land was sought to be charged by one of the creditors of the corporation who had knowledge of and assented to the transaction at the time when it took place. It was held that such creditor was debarred from seeking relief in equity.

In *McGeorge v. Big Stone Gap Imp. Co.*, 57 Fed. Rep., 262, an action was brought by a stockholder of an improvement company for equitable relief on allegations that the assets of the corporation had been wasted, misappropriated and diverted to purposes wholly foreign to that for which the company was organized. The complainant was a stockholder of the corporation; he had voted for and approved of an appropriation of the corporate funds for this purpose.

It was held, that having participated in the transaction, he would not be permitted to attack it.

In *Washburn v. National Wall Paper Co.*, 81 Fed. Rep., 21, Judge LACOMBE, speaking for the U. S. Circuit Court of Appeals for the second circuit, said:

“Since good-will is property, and since in some cases it is valuable property, it would follow that in some way or other it must be practically possible to determine what that value is. Whether the particular method employed in the case at bar to ascertain such value is or is not a proper one, and whether the appraisement made when these several wall paper concerns were bought up by the defendant company was accurate, we are under no obligation to inquire upon the complainant's request. The method of valuation was one which they fully ap-

proved, and which was applied in fixing the value of their own property, as the result of which they received \$1,831,800 in common stock of the defendant. They certainly, participating in the transaction and reaping its benefits, are in no position now to claim that the good-will bought by the defendant company with common stock was overvalued."

See, also,

Ten Eyck v. Pontiac Co. (Mich.), 72 N. W. Rep., 362.

Nicrosi v. Calera Co. (Ala.), 22 So. Rep., 147.

Woolfolk v. January, 131 Mo., 620.

Drake v. N. Y. Suburban Water Co., 26 App. Div. (N. Y.), 499.

In the recent case of *Unckles v. Colgate*, 148 N. Y., 529, a holder of "certificates of trust" issued by the National Lead Trust, sought to bring an action to provide for the winding up of the affairs of the trust, for an accounting by its trustees, and a distribution through receivers of the proceeds of the property. The trust was alleged to be contrary to public policy.

It was held that the action could not be maintained, since the plaintiff, while standing upon his right as a certificate holder, was in the attitude of one not disaffirming the illegal contract, but of seeking its enforcement. Even assuming that he had a *locus penitentie*, he could only avail himself of it by withdrawing from the illegal scheme, repudiating all share in it, and returning whatever he had received therefrom,

It was further held that the agreement for the formation of the trust was to be treated as one executed when the proposed combination of business concerns affected by it had been perfected, and no act remained to be

done by the parties to the agreement but to put it into operation; the agreement having passed out of the executory stage could not be repudiated.

The language of Judge GRAY is extremely pertinent, and is applicable to the position assumed by the complainants in the present case, *who pretend that they are seeking to protect their rights as stockholders which owe their inception to the agreement which they have now attacked*, who have made no effort to repudiate the transaction by offering to return the stock which they received from the corporation.

“ The plaintiff here voluntarily became a participant in a scheme which he alleges to have been illegal, by acquiring the trust certificates subsequently to the formation of the trust. * * * What interest has the plaintiff other than that which his certificate suggests, namely, a proportionate interest as a beneficiary in the trust scheme? He could not well lay claim to the ownership of stocks or property surrendered to the trustees. He acquired certificates which represented the amount of his interest in the trust and which contained a stipulation binding him as their holder to all the terms of the trust agreement. He thus voluntarily made himself a party to a scheme under an executed agreement, which he alleges to have been illegal, and how can he now say that it is one which he can disaffirm and as to which, upon the plea of disaffirming, he can ask a court of equity to intervene and to compel in his favor an accounting and distribution by the trustees. * * *

“ It is very clear that the plaintiff is seeking the aid of the court to enforce certain rights which he deems to have accrued to him by virtue of or as the result of the trust agreement, and although his contention is that his rights are independent of, and unaffected by the illegality of the agreement, he is claiming exactly what the contract was intended to give. As was observed in *Peck v. Burr* (10 N. Y.,

at page 298), 'the plaintiff seeks to have the full benefit of the contract, though in a form of action a little different.' I do not see how the court could grant to plaintiff the relief he demands without recognizing the agreement, and I may use the words of Sir WILLIAM GRANT, Master of the Rolls, in *Thomson v. Thomson* (7 Ves., 470), who in discussing the right of a plaintiff to recover from a fund, observed: 'You have no claim to this money except through the medium of an illegal agreement, which, according to the determinations, you cannot support. * * * Here you cannot stir a step but through that illegal agreement, and it is impossible for the court to enforce it.' I must, therefore, dismiss the bill."

In like manner in *National Wall Paper Co. v. Hobbs*, 90 Hun., 288, where the validity of the vendor's agreements was tested by one of the complainants' confederates, and its legality in all respects sustained, Mr. Justice VAN BRUNT used this significant language:

"In view of the fact that the defendant retained the price which was paid for his corrupt and wicked agreement" (here the court merely assumes the defendant's position *arguendo*) "it is difficult to see how he can claim that he should be absolved from its obligations, or *how he can claim, being a party to the instrument, and having received that which he considered an adequate consideration for the restraint which was put upon his volition, that such restraint should be removed, and he be permitted to enjoy the fruits of what he claims to be his unlawful agreement. We do not think that the defendant is in a position to attack this contract, certainly not with its fruits in his pocket.*"

In *Parsons v. Hayes*, 14 Abb. N. C., 419, the directors of a corporation issued paid up certificates for the entire capital stock of the company, amounting nominally to \$2,000,000, in payment for a mine which was

known to be worth less than \$150,000. The vendor of the property thereupon, in pursuance of a previous arrangement, turned over to the directors a portion of the stock which had been issued to him, which they sold to innocent purchasers. The plaintiff, such a purchaser, brought suit in the form of a stockholder's action against the corporation and directors who issued the stock, seeking to make the individual defendants account for the difference between the nominal value of the stock issued, and the real value of the property received in payment. It was, however, held that the defendants were not liable, inasmuch as the acts of the defendants were performed with the consent, and at the instance of the holders of the entire capital stock. Neither the corporation, nor its stockholders suing on its behalf, could complain.

In *Morawetz on Private Corporations* (2nd Ed.), Sec. 290, the author, speaking of this decision, says:

"This decision was clearly right. The absurdity of the plaintiff's claim became apparent when it is considered that there was no corporation in existence until the issue of the shares which constituted the alleged injury to the corporation had taken place. It is true the statute declared that the signers of the certificate of incorporation should be a corporation, but this at most constituted them a *quasi* corporation to be succeeded by the real corporation consisting of the stockholders when the stock was issued. The vendor of the property in truth took back what he gave. He placed the property in the corporate name, and at the same time practically became the corporation by becoming its sole stockholder. Evidently, therefore, no person was injured by that transaction. If subsequent transferees of shares were deceived by false representations, their claim should have been for the damages caused to themselves individually through the

false representations, and not for an infringement of the collective or corporate rights of all the shareholders."

To the same effect is *Langdon v. Fogg*, 18 Fed. Rep., 8.

Here the entire issue of stock and bonds of the company became the property of Stein, in consideration of the conveyance by him to the company of all its corporate property. But for said issue the petitioners would have no interest in the corporation. By asserting rights as stockholders, they must necessarily affirm the validity of the stock issued from which their relation of stockholders originated. The corporation itself would be utterly destitute of property, would have no *raison d'être* but for the transaction which culminated in the issue of its stock and bonds to Stein. Every stockholder of the corporation assented to the issue, and derives his interest in the corporation from that transaction. The corporation still holds the property in consideration of which the stock and bonds were issued. It received the money of the purchasers of the bonds, and disbursed it to the appellants and other mill owners. Neither the corporation or any of the stockholders have ever disaffirmed the transaction or attempted to make an effectual rescission. How, then, can either the corporation or appellants, who have intervened, not in their individual but in their representative capacity assume to defend for the corporation, attack the very transaction from which corporate life and the existence of stockholders derived their origin, and while affirming the validity of the stock issue, so as to afford to petitioners a standing in court, deny to it all efficacy so far as the bondholders are concerned, whose money the petitioners have received.

Surely the language of Judge FINCH in *Seymour v. Spring Forest Cemetery Assn.*, 144 N. Y., 341, may, with but slight change in phraseology, be applied here:

"That kind of plunder which holds on to the property and pleads the doctrine of *ultra vires* against the obligation to pay for it, has no recognition or support in the laws of this state."

The defense of equitable set-off for stock liability, asserted by appellants, admits a liability on the bonds, and seeks to discharge it by the offset.

"The subject of a set-off is a cross-debt or claim on which a separate action might be sustained, due to the party defendant from the party plaintiff."

Waterman on Set-off, page 3.

"A set-off is not a defense. When a set-off is made, mutual claims to an equal amount on each side become, under the statute, a satisfaction of each other. They operate as a payment of each other. Where the claim of a plaintiff is wholly paid by a set-off, his action is at an end, and he may be liable to costs, but his claim has not been defeated by a defense, but has been paid by the extinguishment of claims against him in equal amount."

Waterman on Set-off, page 9.

A recoupment differs from set-off in that it must arise out of some transaction on which suit is brought, and that it is used only to the extent of the extinguishment of a plaintiff's claim, but it is none the less a *counterclaim*.

Waterman on Set-off, pages 469, 470.

To establish this counterclaim the defendant to that extent becomes the plaintiff, and has the burden of making affirmative proof of his claim. He cannot, under the authorities, affirmatively show a stock liability arising out of a fraudulent overvaluation, since he participated in the transaction.

The prime cost of the mills to Stein was \$2,788,000. Of this amount \$697,000 was a *bonus* to the mill vendors above the agreed selling price of the mills. This reduces the actual sum for which the owners agreed to sell their mills to \$2,091,000. This sum was payable one-third in cash, one-third in preferred, and one-third in common stock. Whether and how far the upset price of the mills was advanced beyond their actual value, in consideration of such terms of payment does not appear.

The mill owners in their options contracted with Stein that he should acquire an indefinite number of mills. They purposely made no provision as to the number that should be purchased. This was left to the discretion of the promoters, aided by the mill owners, and to be controlled by circumstances. Evidently, if an existing mill could not be bought except for an amount far beyond its value, it was not intended it should be acquired. If a mill would be of no value to the new organization because of its location, construction, machinery, or for any other reason, its purchase was not contemplated. What would occur in these regards could not be foreseen.

Several of Stein's associates were mill vendors. They and Stein were in frequent consultation with the others. (Rec., 449, 455.) It must be presumed the purchase of but thirty-nine mills, was acceptable to all under the circumstances which existed. It can not be assumed by the vendors that Stein was obligated to purchase more mills than he did, since in the written instrument which defined his and their rights and duties, no such requirement is made. It can not be so assumed on the ground that prior to the contract, there had been conversations on the subject, since none are shown, and if there were any they were merged in the written contract; nor can

an obligation to that effect be predicated upon any contract, agreement or statement made thereafter by Stein since there is no evidence thereof. The conclusion, therefore, must be that Stein, in acquiring thirty-nine mills, fulfilled all his obligations in regard thereto, to the mill owners.

The mill vendors further required that this company be capitalized with a stock issue of four million dollars, and a bonded debt of one million dollars, secured by mortgage on the properties acquired. That is, the company, holding properties as appellants claim, of the value of not to exceed \$2,091,000, and since there was to be a bonded debt of one million dollars, having a net capital of but \$1,091,000, was to issue four million dollars of stock, or four times the net capital, thus making the stock worth on the theory of appellants, twenty-five cents on the dollar.

What was the object of the mill vendors in requiring such alleged excessive stock issue? What did they intend should become of it? Evidently that it should be divided among all parties in interest. First they contracted that they themselves should receive \$1,287,000, in part payment for their mills. Next, that they should receive \$700,000 as a *bonus* without any payment therefor. In that way, each mill vendor got one-third of the value of his property in cash, and received in addition stock to the full value of his plant. In this way, appellant Diem got his stock as a *bonus*. So did appellants Hooker and Richardson, other mill vendors. So did the Grahams, whose stock Dickerman, the remaining appellant, holds.

The vendors knew that to acquire the mills, create and

finance the corporation would require an immense amount of labor on Stein's part, the employment of many associates and skilled agents, and the incurring of very large expenses; that all, and more than all the money which Stein could get for his stock must be paid to the vendors and to the company for working capital. Stein and his agents could get nothing for their services and disbursements until, and unless the company was successfully floated, the bonds and stock sold, and they knew that stock must be used freely for the multifarious purposes, preliminary to the organization of the company.

They knew also that \$1,000,000 of bonds upon property which was worth at cost prices not over \$2,000,000, could not be sold at par, nor without a heavy bonus of stock.

They intended that Stein should offer a *bonus* of stock with the bonds sufficient to induce bondholders to buy them at par. This is fully shown by the fact that the vendors were all offered bonds with that *bonus*; that so far as objecting to such sale they bought a large amount of bonds; that one of appellants bought four \$1,000 bonds on these terms. In this way they expected that \$600,000 of stock would be disposed of as a *bonus*.

In taking \$700,000 of stock as a direct *bonus* to themselves, (the same being $33\frac{1}{3}$ per cent. above the par value they fixed on the mills), in acquiescing and participating in the gift of \$600,000 of stock to the bondholders, this being 60 per cent. of the par value of the bonds, and by making no provision as to the amount of compensation to Stein and his associates, whom they must have intended should be compensated, they practically agreed and are estopped to deny that Stein was entitled in addition to his reasonable compensation, to share by the

way of *bonus* in the stock of the company from 33 $\frac{1}{3}$ to 60 per cent. of the amount of his services and disbursements, this being the percentage of division to the other parties in interest; they intended that Stein and his assistants should receive for promotion services and expenses all the stock and bonds which were not disposed of by the option contracts. There is no evidence that the allowance was in any way excessive or unreasonable.

That they acquiesced in the division as made, is made certain from the fact that they were parties to the option contracts, and received their share of the *bonus*; that many of them were pecuniarily interested as bondholders in the company, and in all its acts affecting the value of their bonds, and especially that they were stockholders to the amount of \$1,887,000 under their contracts, the same being nearly one-half the stock. In addition, they bought from \$100,000 to \$200,000 of the bonds (Rec., 443), and received therewith from \$60,000 to \$120,000 of stock, making their aggregate stockholding from \$1,947,000 to \$2,007,000. Having these interests in the company for the three years during which the company continued in business, and being entitled as stockholders to be heard in stockholders' meetings, neither any of the appellants or any other mill vendor in stock holders' meeting or elsewhere, ever opened his mouth to object to the transaction between Stein and the company, or to criticise it in the slightest particular during the existence of the company, nor has any *mill vendor* in fact done so in this case or at any time since.

The court will not investigate nor determine whether appellants or the promoters or the bondholders made the best bargain in the division of the surplus stock. Appellants got what they demanded. The others got what they

could. All received some, and if there is any guilt, all are equally guilty. To compel the bondholders to pay for the stock they so received, or, as the same thing, to set off the amount against the bonds, would be inequitable. The effect would be to assess one guilty person for the benefit of others equally guilty. It would enhance the value of the stock of a guilty party asserting the guilty transaction.

IX.

When all the bonds and stock of a company are conveyed for property which the company acquires all *THEN* stockholders assenting, neither the company nor any then or subsequent stockholder can complain.

When the conveyance was made by Stein to the company for its stock and bonds, but eighteen shares of stock had been issued. The holders of this stock paid par for it. They were all directors of the company. Their assent to the transaction as well as that of the company is evidenced by the agreement they made with Stein. Appellants and the other mill owners became stockholders soon after the organization of the company. They acquired their stock from Stein. They knew that it was, to the extent of \$700,000, stock for which they had paid no consideration, and that Stein was getting it in the same way from the company, or received it from the company by adding it to the selling price to the company. They knew that Stein was giving to the purchasers of bonds \$600,000 in stock, and was obtaining it under the same circumstances. If there was any overvaluation, their own acts made overvaluation necessary. They participated in the overvaluation, and hold the fruits of it.

They are attacking the remaining parties who followed in their footsteps. For three years, and until the failure of the company, they acquiesced in the contract under which they obtained their own stock and other stockholders obtained theirs, and no one of them by his testimony or affidavit has furnished any evidence that he did not fully understand and approve of such arrangement.

In *Scoville v. Thayer*, 103 U. S., 143, the court said:

"The stock held by the defendant was evidenced by certificates of full-paid shares. It is conceded to have been a contract between him and the company that he should never be called upon to pay any further amounts upon it. The same contract was made with all the other shareholders, and the fact was known to all. As between them and the company it was a perfectly valid agreement. It was not forbidden by the charter nor by any law of public policy, and as between the company and the stockholders was just as binding as if it had been expressly authorized by the charter. If the company, for the purpose of increasing its business, had called upon the stockholders to pay up that part of their stock which had been satisfied by discount according to their contract, they could have successfully resisted such demand. No suit could have been maintained by the company to collect the unpaid stock for such a purpose. The shares were issued as full-paid on a fair understanding, and they bound the company.

* * * Considered in the view of a court of equity the contract between the company and its stockholders was this, namely, that the stockholders should pay, say, for example, \$20 per share on their stock, and no more, unless it became necessary to pay more to satisfy creditors of the company, and when the necessity arose and the amount required was ascertained, then to make such additional payment on the stock as the satisfaction of the claims of creditors required."

Higgins v. Lansingh, 154 Ill., 333.

In this case it was held that the issue of stock by the corporation for much more than the value of land which constitutes its only capital, *when there are no other stockholders or creditors of the company* to complain, cannot be held to be a fraud on the company itself. The court says:

“ But counsel insist that the corporation was defrauded, that Benson, Blaney and Sherman, being a majority of the board of managers, voted the issue of the capital stock and scrip to themselves without paying the company anything for it and in fraud of the rights of the company, and that such stock and scrip are therefore void. The evidence shows that no deception was practiced on any one; there was no concealment nor pretense of any payment to the company otherwise than by what was called Benson's equity in the land; no pretense that the company had any other capital.

No one was beguiled into becoming subscriber to the capital stock, or a creditor of the company on the supposition that Benson paid anything more than he actually did pay. What was done was done openly, and so far as the evidence discloses, honestly. The company obtained from Benson all the capital it had, and gave no more in return than it received. Had there been at the time other stockholders who had paid for their stock, or creditors who had been injured by the transaction and not assenting thereto, then as to them, counsel's argument would be unanswerable. But in passing on this branch of the case, we must regard the company as a mere instrument by which the plan of Benson and his creditors was carried into effect. If instead of forming a corporation they had conveyed this land to a trustee, clothing him and his successors with power similar to that contained in the charter, as fully as it could be done without an act of the sovereign power of the state, to devote this land to cemetery purposes, it would have been no fraud on the trustee to obtain from him certificates showing that all beneficial interests in the proceeds of the sale of

burial lots belonged to Benson and his creditors. Before the conveyance to the company whatever value the lands had then or prospectively, belonged to Benson and his creditors, and they could have preserved their right to its value by any lawful means, and could have retained the beneficial interest in the proceeds of the sales of burial lots in devoting the lands to cemetery uses. We cannot see why they could not, without any fraud on the company where there was no one else to be injured, take from the company certificates of interest or stock (for the term is immaterial) evidencing their interest in the corporation, or in the proceeds of sales of what had then become corporate property. It is the substance of the transaction that a court of equity must regard, and not the mere form in which the parties have clothed it.

The several counsel for appellants have argued at great length, and cited hundreds of authorities in their endeavor to show that the stock and conditional scrip was fraudulently issued to Benson, and that therefore a court of equity will not grant any relief to the holders of it, who have no higher equities than Benson himself. It is not, and as we understand the evidence, it cannot be correctly maintained that there was any fraudulent intent or purpose, any deception, concealment, misrepresentation or imposition by Benson. But the contention is that in so obtaining the stock and scrip as shown by the evidence, it amounted to a fraud upon the company itself, there being no one else to be defrauded. We are of the opinion that it was lawful for Benson, with the consent of his creditors, to devote these lands to the purpose of a cemetery through the instrumentality of this corporation, and the lands being the only capital of the company, and there being then no other stockholders or creditors of the company to complain, to take and receive from the company certificates representing all of the capital stock, even though their face value was far beyond the value of the lands. It was a mere change from private to corporate ownership of the lands."

Coffin v. Ramsdell, 110 Ind., 417.

Here it was said:

"Patent rights and mining manufacturing property which are embarked in enterprises are frequently valued by their owners and others at a prospective value which may or may not be realized, depending upon future contingencies. If the owners who put such valuation thereon acted in good faith and yet suffered disappointment, we can see no reason why they should suffer further unless they have been guilty of fraud or concealment which has resulted in damage to others."

Foster v. Seymour, 23 Fed. Rep., 65.

Here the trustees of a corporation had delivered to themselves the stock in payment of their mining property. Mr. Justice WALLACE said:

"The corporation lost nothing by the transaction disclosed by the bill, except the paper which was created and called capital stock. None of this stock was diverted. The scrip was not capital stock. The capital stock of a corporation is the money or property which is put into a corporate fund by those who subscribe to the stock and thereby agree to become members of the corporate body. Unless it represents capital contributed or agreed to be paid in, it has no value. The property it received in exchange for the scrip had some value, certainly as much as the scrip had. There was no fraud upon the corporation. At the time the scrip was exchanged for the mining property the trustees were all there was of the corporation. There were no stockholders unless *they* were the stockholders. What was done was done by the corporation. By the exchange the corporation got the mining property and gave it back again to those from whom it got it, divided into 100,000 shares of a nominal value of \$100 each."

Stewart v. St. L., Ft. S. & W. R. R. Co., 41 Fed. Rep., 736.

Here Tiernan and others had purchased an old road-bed and incorporated the defendant railroad company, and were on its first board of directors. They then sold the road-bed to the company for \$200,000 of the notes of the company and \$3,600,000 of its capital stock, which purchase was afterwards ratified by the stockholders. The court said:

" At the time of the sale there were no stockholders and the \$3,600,000 of stock issued under the said purchase was all that had been subscribed or issued, and the only assets of the company were its charter and the road-bed. It appears from the evidence that the road-bed originally cost about \$2,000. It had no marketable value only as it could be used for the purpose for which it was made. It also appears from the evidence that the stock and notes of the company at the time they were issued, had no present marketable value. The value of the property sold as well as the consideration paid (stock and notes) depended very largely upon the success of the enterprise. There is no doubt but the directors, while directors of the company, used their influence to consummate this sale from themselves as individuals to the company, and it is altogether probable that they had that object in view when they bought the road-bed, but the question still remains, are they guilty of fraud, deception or any other breach of good faith in their fiduciary relations as directors? * * * It does not appear in this case that there was any deception or fraud practiced by the parties. The property was open to inspection, and the approximate cost of constructing it was easily obtainable. Its value to the company for the purpose desired was not difficult to ascertain. * * * Now who was defrauded? All parties—directors and stockholders—assented to it and surely subsequent purchasers of the stock from the corporation itself can not now object to it."

St. L., Ft. S. & W. R. R. Co. v. Tiernan, 37 Kan., 606.

In this case a suit was brought on one of the promissory notes given for the road-bed in *Stewart v. Railroad Company, supra*. In reviewing the same transaction the Supreme Court of Kansas said:

"It has been decided time and time again that the owner of a mine, an oil-well or a valuable patent can organize a corporate company to develop mineral or oil, or to manufacture the patented article and take a very large amount of stock in payment of his mine, oil-well or patent, and trust to the value given the stock by the success of the corporation for payment of his labor and discovery. In this class of cases there is a mere transfer of the status of the mine, oil-well or patent. It ceases to be personal property and becomes corporate property, and each individual interest, as well as that of the owner, discoverer or patentee, is represented by shares of stock. It is now decided in this case that the owners of a graded railroad bed can sell the same to a railroad company whose officers and directors are composed of the same identical persons who own the road-bed and issue the stock of the Railroad Company in payment therefor at a time when those who sell the road-bed and own and control the railroad corporation are the absolute owners of all the stock issued by the Railroad Company, and when the terms of sale and the issue of stock are matters of record on the books of the Railroad Company, and when this transaction occurs months before any other or additional stock is issued by the company; that parties owning an old railroad grade, with culverts and some bridges erected thereon, and who organized, control, manage and own the Railroad Company whose stock at the time of the issue has no market, but only a nominal value, can transfer the railroad grade to the Railroad Company, and issue the stock of the company in payment therefor, they and they alone at that time being the only persons interested in the road-bed and in the Railroad Company."

The above cases, *Memphis R. R. Co. v. Dow*, and *Bank of Ft. Madison v. Alden*, *supra*, establish that it is the rule of this court that where there has been no actual fraud, even as against *creditors* claiming an over-valuation, their claims would be denied.

As the transaction between Stein and the company, all its then stockholders assenting, was as between those parties a valid transaction, subsequent stockholders deriving their stock through Stein cannot question it.

It does not appear that petitioners have any grievance against Stein. If they have, it does not concern this suit.

If the cases cited for appellants were in conflict with the foregoing decisions which have received the sanction of this court, they would have no weight here, but they proceed upon a wholly different state of facts from those involved in this case, and are irrelevant. Among those cases is that of

Morrow v. Nashville Co., 87 Tenn., 262.

There complainant filed a bill to be relieved from a stock subscription to the amount of \$10,000 which he had executed to the company, on the ground that the company had refused to carry out its agreement with him concerning his bonds. The bill prayed that his notes which he had executed to the company in part payment for its capital stock be canceled, and that he have a decree for \$1,000 cash which he had paid on his subscription. His bill alleged that by agreement between the company and the stockholders the issue of bonds was to be \$350,000 and the same amount of stock; that each subscriber was to have stock and bonds given him by the company, each for the same amount as he subscribed.

The company changed its plans and decided to issue bonds for only \$100,000 and to sell them on the market. All assented except complainant. The company refused to deliver him the stock and bonds. There had been a *subscription* by him to the capital stock and an independent contract from the company to him to give him bonds and stock. The contract was wholly unexecuted on the part of the company. The court says:

“ It follows from all that we have said that the stipulation concerning the issuance of bonds to subscribers for capital stock was not a *condition precedent* to liability upon the subscription. It was nothing more than an independent stipulation for the breach of which the remedy would be in damages. The failure of the company to carry out its collateral agreement does not defeat the liability upon the subscription. This independent contract was however illegal and void, whether regarded as a condition precedent or subsequent, and for such breach no action would lie. It follows, inasmuch as complainant is liable in equity and at law upon his subscription, that there is no equity whatever in his bill, and the decree dismissing it with costs is affirmed.”

In that case the court virtually recognizes the distinction for which we contend, and for that very reason held that it would not enforce an executory contract which would have the effect of jeopardizing the interests of creditors. Had the contract been executed, it is clear that it would have been sustained as between the corporation and its stockholder. But being executory, and clearly hostile to the manifest rights of creditors and likewise *ultra vires*, equity left the parties where it found them.

The other cases cited by appellants relate to suits by creditors and have no application here. It is apparent that those cases proceed on different lines and involve different equities from those in the case before the court.

Brewster v. Hatch, 122 N. Y., 349, was a wholly different case from this. There concealment and fraud was practiced by the promoters, who afterwards became stockholders, upon their associates.

The court merely held that the promoters of a corporation who held themselves out as trustees to the plaintiffs when they solicited them to purchase stock, by concealing from such purchasers the fact that a majority of the stock was to be retained by such trustees for their own benefit and without any consideration whatsoever, were liable in *damages* to such purchasers in their individual and not in any representative capacity, on the theory of fraud and deceit.

X.

No fraud, concealment or deceit was practiced on appellants, or any vendor.

While the option contracts were being procured, and thereafter and until the company was organized, there were frequent consultations between Stein and his associates and the mill vendors. At these times the progress in obtaining options, the cost of properties, the bonus to the mill vendors and to bondholders, were discussed. Stein's proposition to the company was made a number of days prior to the agreement with the company and the latter modified the proposition. The terms of the option contracts, the number and cost of the mills, the *bonus* offered, the agreement with the company, were open to all. Nothing was secreted.

The mill owners by their option contracts practically determined the arrangement as it was accepted. They fixed the entire amount of stock which should be issued,

and each vendor fixed the amount he should receive. All required that there should be issued to them over and above the selling price of the mill an amount of stock equal to one-third such selling price. The contracts, while they imposed great labor and expense upon the promoters, were silent as to their compensation and reimbursement. That they intended they should be compensated in some way, admits of no doubt, and it is equally evident that it was intended that such compensation should proceed from the corporation to be formed. They must also have contemplated that unless the promoters should be ultimately successful in acquiring the properties, conveying them to the company and floating the company, their labor and expense would be wholly lost, and that under such conditions in case of ultimate success their compensation should be generous and unstinted. They also realized that the promoters must pay their assistants, their agents and attorneys and discharge their expense on like terms, contingent upon success, and to such ends they must use the stock of the company in an amount greatly in excess of an amount which would have been adequate had the promoters been able to deal upon an absolute cash basis. They also understood that to raise money for the payment of their own mills and for other necessary purposes, a sale of the bonds would be necessary. Their experience as business men taught them that bonds of a new industrial corporation could be floated at par only by the offer of some extra inducement in the form of stock, or other way. That they anticipated this is also exhibited by the uncontroverted evidence that they knew that \$600 of the company's stock was offered and given with each bond sold; that a number of vendors, including one of appellants,

purchased bonds and received such amount of stock therewith; that they made no objection at the time to such action and never did until after the company's failure, and that no one of the millmen has in this case, either as a witness or by affidavit, denied that the sale of the bonds with *bonus* of stock was done with his full knowledge and approbation.

There were frequent meetings between the promoters and the mill owners. A majority of the Board of Directors had been such mill owners. By their silence as to the amount of compensation to the promoters and by stipulating for their own bonus of stock, they practically gave and intended to give to the promoters *carte blanche* as to the amount of stock they should receive for their own remuneration. This is substantiated by facts showing that while the proposition from Stein to the company was made December 10, 1892, immediately after the organization of the company, while the agreement between Stein and the company was executed December 15, 1892, and while the transaction was the all-important act of the company and was spread upon its records, while the millmen, including appellants, soon afterwards became through Stein stockholders and were affected with constructive notice, and had actual notice of the transaction, and while the company continued in business more than three years, during all of which time the millmen, including appellants, continued to be stockholders, no one of them, either at a stockholders' meeting, or elsewhere, objected to or in any way questioned the good faith of the transaction, and no one of them has appeared in this case to deny by his testimony or his affidavit that the transaction was had with his full knowledge and approval.

Even Sherwood did not venture to state that the transaction by which the company contracted with Stein and conveyed its stock and bonds to him, was not fully known to the millmen and to every one of them. He does state that he understood that seventy mills were to be taken by the company, but he does not state that any one told him that there should be, or that he received any assurance to that effect. He also testified that the millmen did not know that less than seventy mills were taken into the company, but on cross-examination it appeared that he was not testifying as to his knowledge, but merely his belief. (Rec., 373, *et seq.*)

It is submitted that Sherwood's testimony is not entitled to respect. He stated that he promoted, induced and brought about this proceeding by appellants in order to compel the persons who were directors of the company to pay him \$25,000 which they did not owe him. He showed in his cross-examination that he did not hesitate to swear absolutely to that of which he had no knowledge. That he is using appellants as a tool to accomplish his private purpose appears from the fact that no one of appellants appeared as a witness, swore to any affidavit, or even signed a pleading or other document of record, but that all was done by Sherwood. Appellants merely permitted Sherwood to use their names. Not they, but he, is the real party who is prosecuting this appeal.

The burden of proving fraud or deceit practiced upon the mill owners was upon appellants. They proved none whatsoever.

The company was organized in the way in which appellants and other mill vendors intended it should be organized.

The plan authorized by them was that Stein should acquire the properties and convey them to the company. The company was to furnish Stein with the means of paying the vendors. The parties of the second part to the option contracts to whose rights and obligations Stein succeeded, were to pay the vendors the cash and the stock called for by the option contracts. Payments could not be made to vendors until the company was organized, had issued the stock and delivered it to Stein. Until such time the vendors were not to become stockholders; Stein was to organize the company. To organize a corporation means to provide its organic elements, viz.: incorporators, a charter, stockholders, directors and officers, so that it can do business.

The incorporators were Philo D. Beard, William C. Heppenheim and William C. Taylor, each of whom subscribed for four shares of stock. These incorporators elected a temporary board of directors, which made the agreement with Stein, and the transfers of the stock and bonds to him, which enabled him to pay cash and transfer stock to the mill vendors as they had required he should. This temporary board, through this contract, carried out the plan which had been stipulated for by the appellants themselves and the other mill vendors in their contracts.

If there was no fraudulent over-valuation of the property, as we have attempted to show, then all the stock was fully paid and appellants had no just grounds for complaint.

If it should be considered that there was such fraudulent over-valuation as would enable *creditors* to maintain an action against the stockholders, to enforce a

stock liability, the company cannot, nor can a stockholder on behalf of the company, sustain such action, because the contract which Stein entered into was to pay for stock with the properties and in no other way, and there is no room for an implied contract where there is an express one. Therefore, neither Stein nor his transferees can be held liable for payment of the stock.

And if the value of what Stein conveyed was less than the par value of the stock it equaled it in actual value. Stein conveyed the property and got certificates of stock, the stock was worth what the property it represented was worth—no more and no less. Appellants and all parties agreed to the transaction. They participated and acquiesced in it and are estopped to attack it.

But even if we were to assume that the individual stockholders may have been the victim of deceit (which is not the fact), yet that circumstance would afford them no standing in this action. Separate causes of action would exist in favor of individual stockholders against the persons who may have been responsible in a legal sense for such deceit. Such cause of action would give rise to a common law action as to which right of trial by jury would exist and would not be cognizable in a suit in equity. Moreover, the corporation would have no concern with such a cause of action. It would not enure to its benefit. It would not affect the trustee for the bondholders or the body of bondholders or of stockholders. It would have no relevance to an action brought to foreclose a mortgage executed by the corporation simply because the fraud or deceit related to the stock of such corporation or may have been practiced by one or more of the bondholders secured by the mortgage in process of foreclosure.

What concern is it to A, B and C, bondholders secured by the mortgage to the corporation, or to D, E and F, stockholders of the corporation, that G, another bondholder, or H, the original holder of all the bonds, may have been guilty of deceiving I, J and K, who happen likewise to be stockholders of the corporation whose property is being foreclosed?

Such fraud or deceit might likewise warrant the rescission of the sale of property made in consideration of stock fraudulently issued, but the party rescinding would be obliged to act promptly, and to return the entire consideration received. The petitioners did not offer to return their stock or the cash which they received. Neither does the corporation. Yet they ask that the bondholders, who have received no benefit from the stock issued to them, should forfeit their bonds, for which they paid \$1,000,000, the whole of which was received by the corporation and distributed among the petitioners and other mill owners, who seek to retain whatever they have received in cash, and now wish likewise to retain the entire property freed from the mortgage lien without paying one dollar to the bondholders.

XI.

In no view of the case can any relief be granted against the stockholders of the Columbia Straw Paper Company in this action brought in a forum other than that of New Jersey, the laws of which regulate this corporation.

In effect, the appellants attempt in this action to enforce a stockholders' liability against the bondholders.

This they do by seeking to extinguish the liability of the corporation to the bondholders by an enforcement of the liability of such bondholders as happen to be stockholders, as stockholders.

It requires no argument to sustain the proposition that there is no common law liability on the part of such stockholders to the corporation or to a creditor, even though the stock which these bondholders may have held was not full paid stock. Their liability, if any, must depend upon the statutes under which the corporation was organized and which created a remedy as against stockholders whose shares were not fully paid.

An examination of the statutes of New Jersey indicates that no cause of action exists against such stockholders in favor of the corporation or in favor of any other stockholder. The only liability which is created is that specified in the following provisions of the New Jersey corporation laws:

SEC. 5. "Where the whole capital of a corporation shall not have been paid in and the capital paid shall be insufficient to satisfy the claims of its creditors, each stockholder shall be bound to pay on each share held by him, the sum necessary to complete the amount of such share as fixed by the charter of the company, or such proportion of that sum as shall be required to satisfy the debts of the company."

SEC. 27. "The directors of every such company may, from time to time, assess upon each share of general stock such sums of money as two-thirds of the stockholders in interest shall direct, not exceeding, in the whole, the amount at which each share shall be originally limited under the third article of the eleventh section of this act; and such sums so assessed shall be paid to the treasurer at such times and by such installments as the directors shall direct, said directors having given thirty

days' notice of the time and place of such payment in a newspaper circulating in the county where such company is established."

SEC. 28. "If the owner or owners of any such share or shares shall neglect to pay any sum or sums duly assessed thereon for the space of thirty days after the time appointed for the payment thereof, the treasurer of the company may sell, at public auction, such number of the shares of such delinquent owner or owners as will pay all assessments then due from him or them, with interest, and all necessary incidental charges; provided, two-thirds of the stockholders in interest shall so direct."

SEC. 93. "When any of the officers or directors of any company, or stockholders thereof, shall be liable, by the provisions of this act, to pay the debts of such company, or any part thereof, any person to whom they shall be so liable may have an action on the case against any one or more of the said officers, directors or stockholders; and the declaration in such action shall state the claim against the company, and the ground on which the plaintiff expects to charge the defendants personally."

SEC. 94. "When any of the said officers, directors or stockholders are liable, as mentioned in this act, for the debts of any such company, or any part thereof, the person to whom they are so liable may, instead of the other proceedings mentioned in this act, have his remedy against the said officers, directors or stockholders by a bill in chancery."

SEC. 96. "No sale or other satisfaction shall be had of the property of any director or stockholder for any debt of the corporation of which he is such director or stockholder till judgment shall have been obtained therefor against such corporation, and execution thereon returned unsatisfied, but any suit brought against any such director or stockholder for such debt shall stay after execution levied or other proceedings to acquire a lien until such return shall have been made."

Under these statutory provisions, it has been held that

a creditor must exhaust his remedy by judgment and execution and return *nulla bona* before he can resort to the liability of stockholders; that such suit can only be prosecuted by a creditor suing in behalf of all the creditors of the corporation, and that the corporation is a necessary party to the suit, and that all of the assets of the corporation must be brought into the suit and put in the course of administration.

Wetherbee v. Baker, 8 Stew. Eq. (N. J.), 501.

Bickley v. Schlag, 8 Dick. Ch. (N. J.), 533.

Numerous other authorities might be cited to the same purpose.

It clearly follows from these statutory provisions, as they have been construed by the New Jersey Court of Chancery, that a special remedy is created, under the laws of that state, for the enforcement of the statutory liability imposed upon stockholders. This remedy, from the nature of things, is exclusive, and hence it follows, from numerous well-considered cases, that the remedy, being exclusive, can only be pursued in the forum of the state which creates it, and there is a uniform line of authority to the effect that the courts of other states will not apply special statutory remedies designed to be pursued in the courts of the sister states, particularly where it is sought to enforce a stockholder's liability.

Erickson v. Nesmith, 4 Allen, 233.

New Haven Horse Nail Co. v. Linden Springs Co., 142 Mass., 349.

Bank v. Rindge, 154 Mass., 203.

Marshall v. Sherman, 148 N. Y., 9.

Barnes v. Wheaton, 80 Hun., 8.

Lowry v. Inman, 46 N. Y., 119.

Young v. Farwell, 139 Ill., 326.

Fowler v. Lamson, 146 Ill., 472.

Patterson v. Lynde, 112 Ill., 196.

Id., 106 U. S., 519.

May v. Black, 77 Wis., 101.

Nimick v. Iron Works Co., 25 W. Va., 184.

In *Erickson v. Nesmith*, *supra*, the court said:

"It is urged, on the part of the plaintiffs, that great practical evil may result from thus refusing to charge a party here who is an actual stockholder of a corporation in New Hampshire, but who resides without its limits. To this it may be replied, that it would be a much more serious evil to hold that the whole matter of winding up the concerns of a bankrupt corporation of New Hampshire, ascertaining who are its creditors, who its stockholders, what is the amount of its assets, and how are the same to be distributed, should be transferred to the jurisdiction of Massachusetts, by reason of the residence here of a single member of such corporation. There seems to be no practicable mode of dealing with such corporation and its members, when seeking to charge the latter upon their statute liability, but to proceed in the manner prescribed by the statute creating such liability, and in the local jurisdiction where the corporation was established and carries on its business, and by whose local statutes alone the liability exists."

Here the petitioners are seeking, by indirection, to enforce, as against the stockholders, who were likewise bondholders, and who constitute but a small portion of the stockholders, a stockholders' liability for the purpose of extinguishing the bonded indebtedness of the corporation. Under the authorities this could not be done in New Jersey under the statutes as they have been construed by the Court of Chancery. How then can a

remedy, created under the laws of New Jersey, be enforced in another tribunal which would be unavailing? And how could the remedy which is here resorted to, and which must be based upon the laws of New Jersey, be enforced in another tribunal? Especially must this be true where but a portion of the creditors, and a small proportion of the stockholders, are parties to the suit.

XII.

The court did not err in striking appellants' cross-bill from the files.

It is well settled that in a bill to foreclose a trust deed like that in this case stockholders are not necessary parties, that they can become parties only by leave of court, and that such leave will be granted only when some fraudulent conduct on the part of the bondholders, trustees or other parties is alleged to have occurred which could affect the rights of complainant trustees to foreclosure proceedings.

Thomas v. Brownville R. R., 109 U. S., 526.

The Circuit Court upon application by appellants permitted them, upon their petition, to become defendants, and to answer and file a cross-bill upon the hypothesis that their answer might disclose a state of facts which would preclude complainants from enforcing the foreclosure of the trust deed, or which would allow it to be enforced only to a limited extent, and that the cross-bill would be germane to the original bill, would seek such relief as could be granted in the suit, would not set up merely matters of defense and would be in compliance with the Rules of Practice in Equity.

Appellants were merely an insignificant part of the stockholders and were not creditors. The theory of their answer was that all the bondholders had acquired stock of the company without payment therefor, or that they were assignees of such bonds with a notice of all equities, that they were indebted to the company for such stock, and that the court should in that action ascertain such indebtedness and set off or recoup the same against the bonds. It was apparent that this was matter in *defense* of the action which could be fully availed of, if at all, under the answer. Under their answer appellants had the full benefit of that defense. Their defense failed, but not for want of a cross-bill.

The cross bill set up the same facts and claims as did the answer. It was the answer *verbatim* with merely such changes as differentiate in form an answer and a bill. It prayed that an account be taken as to the bonds and stock and that stock liability be applied in discharge of the bonds. As the Court of Appeals said:

"It alleged the fraudulent overvaluation of property by the company and by directors and stockholders; that the contract under which the bonds were issued was fraudulent and void, and that the bonds and mortgage were void; all of which was matter of defense and had been set up in the answer. * *

* If two answers setting up the same matter had been put in, no one would question but what one of them should be struck out, and the labeling of one a cross-bill does not change the rule."

A cross-bill setting up no defense except what could be set up by answer, will be dismissed.

Am. Co. v. Marquans, 62 Fed. R., 660.

Where the right claimed by a defendant consists simply in excluding the plaintiff from the right asserted by the latter, of course there is no occasion for a cross-bill.

1 Foster's Fed. Pr., Sec. 171.

A cross-bill never should be brought where parties can obtain in the original suit the relief sought for by the cross-bill.

2 Daniels Ch. Pr., p. 1,551.

But appellants claim that the object of the cross-bill was not merely to establish a defense to the bonds, but to obtrude into this foreclosure suit a proceeding on behalf of the defendant corporation to determine whether there was a fraudulent over-valuation; to ascertain the extent of such over-valuation, if any; to establish the extent of the liability of the few stockholders who were made defendants; to apply so much of said liability as was necessary to discharge the same against their respective bond indebtedness, and to obtain a decree in favor of the company for any remainder by way of affirmative relief.

There were abundant reasons why such bill could not be maintained.

1. The bill was, as appellants show, filed by stockholders of a corporation under the 94th Equity Rule. It does not comply with the rule, in that it does not contain allegations that complainants were shareholders at the time of the transactions of which they complain, to wit: the delivery of the bonds and stock to Stein by the company in payment for the property purchased, or that their share had devolved upon them since by operation of law. It affirmatively appears that they were not stockholders at the time of said transactions, and that the stock came to them subsequently by contract and not by operation of law, and that they acquired it with constructive and probably actual notice of all the transactions complained of. This was an incurable defect.

Next, the bill does not allege that the suit (the cross-bill) was not a collusive one, to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance.

2. It affirmatively appeared that only a small number of stockholders were made parties to the cross-bill. It would be most inequitable to allow a minority of the stockholders to be selected as defendants, and to decree that they pay to the company an unpaid balance due on their stock for the benefit of the remainder stockholders whose stock was equally unpaid. A proceeding against stockholders could be maintained only where all stockholders as well as creditors were made parties, and where all the affairs of the company could be liquidated. No attempt was made at any time to amend the bill in this respect.

3. It was shown that in the chancery proceeding in New Jersey (where the company was created) a receiver of the company had been appointed at the instance of creditors to collect and distribute all the assets of the company (Rec., 568), and due recognition of the rules of comity required the court below to refrain from attempting to supersede the rights of such receiver, appointed in the proper proceeding, where the rights and liabilities of all parties could be adjusted. The petition on which a receiver was appointed in New Jersey was filed April 3, 1895 (Rec., 563); the receiver was appointed May 6, 1895 (Rec., 568); the cross-bill was filed May 18, 1895. (Rec., 99.)

4. The cross-bill, so far as it seeks affirmative relief beyond purposes of defense, was not germane to the original bill. The original bill was for the foreclosure of a mortgage. Under it mortgagees in possession sought to

subject the property to the payment of the bonds secured by the mortgage. The subject-matter of this suit was this subjection of the property to the payment of the bonds. The subject-matter of the cross-bill (beyond what was matter of defense) was the enforcement of a stock liability of certain stockholders to the original complainant. Such relief could only be had by an independent proceeding. No amendment to the cross-bill could change this situation.

Lund v. Skanes Enskilda Bank, 96 Ill., 181.

In this case a foreign bank filed a bill against the assignee and creditors of an insolvent banking firm in Illinois to establish a debt due from the latter to the former and to obtain dividends out of the partnership property. It was held that a cross-bill by the resident creditors of the insolvent bank against a foreign bank, alleging that the latter was a member of the partnership or a partner in the firm, and asking a decree against the foreign bank for an amount sufficient to pay the debts of the defendant creditors, and those represented by them remaining unpaid after the assets in the hands of the assignee were exhausted, was not germane to the original bill and was properly dismissed on demurrer. The court said:

“The subject-matter of the original bill was the proper distribution of the proceeds arising from the partnership property in the hands of the assignee, and that bill related alone to the disposition of that property. The cross-bill in the relief sought has no relation whatever to the disposition of this fund in the hands of the assignee, but relates to a matter entirely independent and different.”

It would be unprecedented to allow a bill to enforce a stock liability of creditors to be attached to a bill to foreclose a mortgage.

A cross-bill, being an auxiliary bill merely, must be a bill touching matters in question in the original bill. If its purpose is different from that of the original bill, it is not a cross-bill, even though the matters presented in it have a connection with the same general subject.

Cross v. DeValle, 1 Wall., 1.

5. There was no showing that the bondholders, or any of them, were insolvent, or that full relief could not be had against them by any party entitled to any in the proceeding in New Jersey on behalf of creditors, or in any other original proceeding.

6. The complainants in the cross-bill were *in pari delicto* with defendants in the transactions complained of, or they succeeded to the ownership of stock, with knowledge of all facts, from those who were participants in said transactions.

The trial court and the Court of Appeals were of the opinion and held that the evidence in the case did not sustain the defense asserted in appellants' answer. If their conclusions were well founded, *a fortiori* appellants' cross-bill could not be maintained.

It is apparent that this cross-bill prosecuted by stockholders who were unable to comply with the 94th Rule of Equity, who were *in pari delicto* with the defendants, who after full opportunity were unable to produce testimony to support their allegations, who had failed to make necessary parties defendants, who showed no ground for equitable relief, who were attempting to prosecute a cross-bill which could not be maintained because it was not germane to the original bill, could by no amendments make a cross-bill which under the evidence could be maintained.

The time limited to defendants and to cross-complainants to close their proofs finally terminated January 3, 1896. (Rec., 338.) The cross-bill was not struck from the files until January 21, 1896. (Rec., 256.) All testimony which was or could be introduced to sustain the cross-bill was then before the court, and is in the record. If it does not sustain the answer, it could not support the cross-bill, and the latter must certainly have been dismissed on final hearing, or relief under it denied for want of equity, had it not been disposed of at an earlier date. Appellants have then lost no right, and are in no worse position than they would have been had the order striking the cross-bill from the files not been entered. As the court has before it all the evidence which could be used to support the cross-bill, and as it is insufficient to sustain either the answer or the cross-bill, substantial justice has been done in the case, and the error complained of by appellants that the cross-bill was stricken from the files has caused them no injury, it being immaterial in result to them whether the cross-bill was struck from the files, dismissed on demurrer or on the final hearing. It is submitted the cause could not be reversed for an erroneous ruling when it is apparent from the whole record that appellants have sustained no injury. Appellants' grievance is not that they did not obtain the remedy they sought, but that it was properly denied them in an erroneous manner. Error without prejudice, it is submitted, is not sufficient ground for a reversal of the decree.

Decry v. Gray, 5 Wallace, 795.

Gregg v. Moss, 14 Wall., 564.

Allis v. Ins. Co., 97 U. S., 144.

Gammen v. Pratt, 99 U. S., 619.

Mining Co. v. Taylor, 105 U. S., 34.

Hornbuckle v. Stafford, 111 U. S., 389.

But we contend that there was no error in striking appellants' cross-bill from the files.

The motion to strike the cross-bill from the files rested on the ground that the *interlocutory orders of a court of chancery are always under the control of the court*; that if on inspection of the cross-bill filed under leave of court, it appeared that the matter set forth was not matter to justify a cross-bill, it was as fully within the power of the court to strike the cross-bill from the files as it was to give leave to file it.

Forbes v. Memphis R. R., 2 Woods, 325.

The above case was heard on motion to vacate an order allowing certain parties to intervene as defendants, and to file answer and cross-bill, and the court says:

"The intervenors having, as the court thought, presented a *prima facie* case, orders were made in accordance with their request. The complainant moved to vacate the order, and the question was raised whether the applicants should be allowed to intervene. * * * It is questionable whether in any case where a suit is properly instituted against a corporation a stockholder of that corporation can, even on a suggestion of fraud on the part of its officers, come in by way of intervention as a party to that suit, and seek to defeat and control the proceedings. An original bill would rather seem to be the proper mode of proceeding, and it is in the discretion of the court whether or not to permit a stockholder to become a party defendant in any case where he is not made such by the bill, and as it is held to be an extreme remedy to be admitted by the court with hesitation and caution, I think I ought not to have allowed it in this case and ought now to withdraw the order for such allowance. The orders for leave to intervene and file answers and cross-bills will be vacated."

The above case is not inconsistent with that of *Betts v. Lewis*, 19 Howard, 72, cited for appellants.

The latter was an original bill. The complainant was in court *by right of law and not by permission of court*. In such case, the court cannot dismiss except on motion or on final hearing. Before the pleadings were made up upon motion the court dismissed the bill for want of equity. This was held to be erroneous, the court suggesting that any defects in the bill might be cured by amendment. The rule in relation to cross-bills *filed by leave of court* is different. There the court may withdraw its permission. When in such case the court ascertains that the cross-bill filed is not such as was entitled to be filed under its order, and where it is of such a nature as to be wholly wrong and incapable of amendment so as to sustain it, it is in the power of the court to revoke its permission and dismiss the bill, and that was what was done by the Circuit Court in this case. The cases cited for appellants are not in point. It has never been held that the interlocutory orders of a court were not under its control.

XIII.

There was no necessity for a production of the bonds before the master.

The foreclosure suit was by mortgagees *in possession*. Under a mortgage given to secure 1,000 negotiable bonds, the trustees, although they did not own any part of the mortgage debt, were the proper parties complainant.

2 Jones on Mortgages, Sec. 1, 383.

Jones on Corporate Bonds and Mortgages,
§ 386.

This is a departure from the rule which requires the real parties in interest to be the parties complainant.

The Columbia Straw Paper Company, which alone executed the mortgage, was originally the only defendant. Appellants, minority stockholders, became defendants by leave of court, on their own application, in order to set up defenses which as they claimed, the company neglected or refused to assert. The complainant trustees were not the owners of the bonds or any of them, but were mortgagees in possession and had power and the duty under the trust deed (Rec., 41; Art. VII) to enforce the lien of the mortgage by foreclosure and sale.

In ordinary actions upon negotiable paper the plaintiff is the original payee or is a transferee of the instrument, and one of the material questions at issue is whether he is the owner and therefore entitled to maintain the action. Such are the cases cited for appellants.

Where a mortgage has been made to trustees to secure a large number of bonds, as in the case of railroad mortgages and those of large industrial and other corporations, in an action of foreclosure by the trustees, such question does not arise. The ordinary rule that the real parties in interest must be the parties complainant is departed from, as well as the rule that the complainant must produce the bonds.

It is not pretended that the trustees own any of the bonds. Their right of action did not depend upon their possession or ownership of them. It was the agreement of all parties that they should enforce the mortgage without regard to ownership. It is sufficient that they prove in regard thereto that the bonds were valid bonds; that they were issued and are still outstanding and unpaid in

the hands of some one, it matters not whom. That and that alone was the issue for them to maintain in that regard. When that was established the indebtedness of the mortgagor was judicially established. The right to a decree of sale was not affected by the question who were the holders of the bonds at the time of such decree or sale.

The original bill in this case averred (Rec., 5) that

"All of the one thousand bonds of \$1,000 each, with the coupons attached, were duly issued, negotiated and sold, and are now outstanding and valid obligations of the defendant, Columbia Straw Paper Company, and the same, with the coupons annexed thereto, have come into the possession of and are now held by a large number of persons who have become the owners thereof,"

and that all the bonds were in the form set forth in the mortgage. This was distinctly admitted by the answer of the defendant company (Rec., 70), as follows:

"Defendant admits that it executed and issued one thousand bonds of \$1,000 each, and alleged in said bill of complaint, of the tenor and effect and containing the provisions substantially as set forth in said bill, and that said bonds were certified by the said Northern Trust Company, complainant, as trustee, and that the same have been negotiated and sold and are now valid outstanding obligations of said defendant company, as in said bill set forth."

What the creditor complainants aver on this point, and the defendant company admitted, was established. No further proof was necessary. Appellants, simply minority stockholders, could not question the situation as thus established unless they affirmatively showed the admission to be untrue and fraudulent. If the defendant company is satisfied with the decree in this regard, the

minority stockholders can have no voice, as no fraud is perpetrated upon the company.

Appellants did not attempt to show that the admission of the company was untrue. On the contrary, by their pleadings they admitted, and by their testimony proved that it was true. The petition of appellants (Rec., 77) showed that all the bonds were *issued and paid for at par* by the purchasers. The *answer of appellants* (Rec., 89) admitted that they were *issued* and are *outstanding*, but denied their validity for the reasons assigned. The testimony of Mr. Heurtley for complainants showed (Rec., 219) that the one thousand bonds described in the mortgage were certified and issued by the defendant company; that the company had not paid or discharged any of them; that the interest coupons due June 1, 1894, December 1, 1894, and June 1, 1895, had not been paid. The testimony on behalf of *appellants* (Rec., 280) showed in detail that the bonds were issued and to whom they were issued, and that they were still owned by the parties named. The master found and certified (Rec., 266) that all the issue of said one thousand bonds was negotiated and sold and is now outstanding, and a valid obligation of the defendant, Columbia Straw Paper Company, and that they were due and unpaid. The decree (Rec., 528) so found, and ordered a sale unless payment was made (Rec., 531) within a specified time. There was no personal decree against the defendants for costs, or against the defendant company for any deficiency, such matters being reserved for future consideration by the court (Rec., 544).

It is then established that the one thousand bonds, the contents of which were proved, had been duly issued and were outstanding. The only thing that can possibly be

regarded as in dispute is their validity. This question of their validity could not be determined or affected by the production and inspection of the bonds. The court already knows what they were. The attack on their validity must rest upon evidence outside the bonds themselves. If the court concludes from the evidence that they were valid, their production before sale was unnecessary. If invalid, their production at any time would be futile.

The validity of the bonds we have discussed elsewhere. The only question here is whether in foreclosure proceedings in the case of mortgages given to secure a large number of bonds, a production of the bonds before a decree of sale is necessary.

No useful purpose would be subserved by requiring trustees to produce the bonds before the master in order to entitle themselves to a decree of sale. On the contrary, to so require would be a denial of justice to most of the bondholders as well as to the trustees, who must look to the proceeds of a sale for their compensation and reimbursement.

As the Court of Appeals said in its decision:

“ In these cases where bonds issued by railroads or other large corporations on a large scale, and held in trust by trustees, but really owned by persons in many parts of the civilized world, it has not been the practice, nor will it be practicable to require the bonds to be produced before the court or master before a decree *nisi* is entered. The practice has uniformly been, to enter a decree of sale without the production of the bonds. Of course they cannot be paid or share in the proceeds of sale until brought into court for payment and cancellation. In many cases years elapse after a decree is entered before all the bonds are brought in, the money lying in the

registry of the court awaiting their presentation for payment, and in some cases, all the bonds are never produced or paid. If the rule required all the bonds to be produced before the court or master, before a decree for sale could be made, it would, in many cases, be a practical denial of justice. No such practice has ever obtained to our knowledge, and the sale is made for the benefit of all properly concerned. The decree is not final as to the persons or debts entitled to share in the proceeds. When the time for distribution arrives, any creditor may challenge the title of the claimant of any bond presented."

Toler v. East Tennessee R. R., 67 Fed. Rep., 168.

In this case a bondholder owning a small number of bonds, filed a bill for foreclosure against the railway company on behalf of all bondholders who might join as complainants. Others, claiming to own more than \$2,000,000 of the \$6,000,000 issue, joined as complainants. The trust company was made a defendant and filed a cross-bill, also praying a foreclosure. Issues were joined, proofs made, and the case was ready for a decree and the complainants and cross-complainants both moved for a decree of foreclosure.

The court said:

"The point has been made that it has not been alleged or shown that complainants own any of the defaulted coupons. Complainants claim to own or represent more than \$2,000,000 par value of bonds. They allege that the coupons maturing August 1, 1893, February 1, 1894, and August 1, 1894, aggregating \$450,000 'are due and wholly unpaid, together with interest thereon to your orator and other holders of said bonds.' This is a sufficient allegation of ownership. The cross-bill of the trustee seeks the same relief in behalf of all unpaid interest. A decree finding unpaid interest is justified by the al-

legations of either bill. It is not necessary that each claimant of a bond or of unpaid interest should at this stage of the foreclosure case, identify himself as the owner of bonds or unpaid coupons. It is not necessary that the bonds with coupons should be produced before a *nisi* foreclosure decree. It is only necessary that it should, at this stage of the cause, appear that there has been a default, and the amount of that default. This showing has been made. Should a decree with sale be made absolute, the holders of bonds can then be required to produce their bonds and coupons before a master, and all questions connected with the amount due each, and of ownership, can then be determined. *Guaranty Trust and Safe Deposit Co. v. Green Cove Springs & M. R. Co.*, 139 U. S., 150, 151; 11 Sup. Ct., 512. Such a decree is not to be regarded as final as to the debts entitled to share in the distribution, for any other creditor may challenge the debt when the claims are produced in the master's office for ascertainment and classification. The decree for a foreclosure only, establishes that there has been a default in the payment of the three last installments of interest. It does not establish that that interest is due to any particular person. *

* * *

"A decree *nisi* will be drawn as here indicated, requiring the mortgagors to pay into the registry of the court the amount of the defaulted interest, with interest from maturity of each installment. Such payment will be made on or before the expiration of 90 days from date of decree. In default of such payment, the shares held in trust will be sold under foreclosure of the mortgage, principal and interest. * * * In case a sale is made, it must be a final foreclosure of the whole property, the purchase money taking the place of the trust shares. The distribution will be in satisfaction, *pro rata*, of all the bonds, principal and interest."

In that case one-third the bonds were owned by complainant bondholders and two-thirds were represented by

the trust company. The court held their production was not necessary prior to a decree of sale.

In the above case, as well as in this case, the decree was a decree *nisi*. A sale was to be made unless within a fixed time the defendant paid the amount of the decree. Such decree was not only a *nisi* decree, but it was a final decree, from which appeal or writ of error could be taken. It was not final as to the parties entitled to share in the distribution of the proceeds.

The court in this case denied a right of set-off against the bondholders arising out of their alleged stock liability. If it committed no error therein, the distribution will be freed from such question of set-off. If the court erred therein, then the decree was bad altogether. The production of the bonds could not have aided the court in the determination of that question.

XIV.

There was no collusion or fraud in connection with the Flannagan judgment and the issuance of the execution thereon and the proceedings by reason thereof.

“ Collusion ” is defined as follows:

“ Secret agreement for an *unlawful* purpose ; *fraudulent* co-operation ; a secret agreement between persons to *defraud* or to obtain an *unlawful* object through legal proceedings.”

Standard Dictionary.

“ An agreement between persons to *defraud* another of his *rights* by the forms of law, or to obtain an object forbidden by law.”

Anderson's Dictionary of Law.

“ An agreement between two or more persons to *defraud* a person of his *rights* by the forms of law, or to obtain an object *forbidden by law*.”

Bouvier's Law Dictionary.

Flanagan was a bondholder, residing in New York. He sent six coupons owned by him to Mr. Wolf for collection. The latter, not being willing to act in the matter, gave them to Mr. Leffingwell, telling him that Flanagan had sent them to him for collection, but that he did not desire to act. The latter, without further instruction, acting for Flanagan, immediately put them into judgment. The president of the defendant company afforded the plaintiff all facilities for a speedy trial. It was had and execution was issued, and it not being immediately paid, the trustee at once took possession.

The defendant company owed the debts sued for. It had repeatedly defaulted in its interest. All its property was subject to the mortgage given to secure its bonds. It was insolvent and unable to continue in business. The evidence leaves this in no possible doubt. It had no defense to the action. No duty rested upon Flanagan to refrain from entering judgment, and none upon the defendant company which should have caused it to throw any obstacle in the way of the judgment, or which should have induced it to attempt to defer judgment until the mortgaged assets should be dissipated and its mortgagees involved in litigation with other parties as to their rights. Nothing was done which was forbidden by law or equity. A debtor corporation, by the individual, may at any time dispose of all or any part of its property in payment of its just debts. It may anticipate the time of payment.

It is settled that an insolvent corporation, like a pri-

vate individual, independently of any positive law to the contrary, may in good faith turn out a part or the whole of its property in payment of its debts.

Gottlieb v. Miller, 154 Ill., 52.

Ill. Steel Co. v. O'Donnell, 156 Ill., 630.

Fogg v. Blair, 133 U. S., 534.

Here no debt was created. Years before, and on the organization of the corporation, it had executed this mortgage to secure this issue of bonds. The execution of the mortgage was approved by all parties in interest. It was stipulated for by the mill vendors in their option contracts. It was agreed to by every director, officer and stockholder in the company. The holder of every bond had paid therefor \$1,000 in cash. The company received every dollar of this cash. The complaint of appellants is not that the bonds are invalid, but that a defense in the way of set-off exists against the bonds growing out of stock transactions. It does not appear that any director of the corporation held any of its bonds in January, 1895. It is immaterial whether they did or not, as the securities named in the mortgage had been pledged to the trustees years before to secure a valid debt. When the company became insolvent and had no assets with which to conduct business, the civil law authorized, and the moral law required the corporation to surrender the mortgaged property to the mortgagees in order that they might protect their own interests.

It was lawful for the company to turn over the mortgaged property to the mortgagees in payment of its debt, without any action on the part of Flanagan, or any one, and without any judgment against it, and without any action by the trustees or bondholders. When the com-

pany did indirectly what it might have done directly, when it permitted a judgment against it to which it had no defense, the effect of which was to allow possession by the mortgagees, its conduct was not only legal, but in a high degree equitable, and minority stockholders, since there was no fraud, can not complain.

Concede all that appellants claim, that Flanagan intended by his judgment and execution to bring about foreclosure and possession by the trustees; that the company, being aware of his intention, facilitated his purpose, and that the trustees had foreknowledge of his intent and of the action of the company, there was no collusion in a legal sense.

The situation was not that of a corporation able to conduct business whose career was unnecessarily arrested by grasping bondholders. It was an insolvent corporation, destitute of resources, hopelessly in debt, whose continuance in business would, under the circumstances, have been a fraud not only on the bondholders but upon all with whom it should have dealings.

There was no artifice, fraud, trickery or stratagem on the part of Flanagan or the defendant company. His purpose to obtain a judgment so that the mortgagees might take possession was open and honest, and so was that of the corporation.

If the failure to institute a defense to a valid cause of action and the predication of legal rights based on a judgment thus obtained constitute collusion, creditors of a corporation cannot safely act on a judgment taken by default by confession or on offer. A corporation would be bound to contest every claim presented to it. Any attempt to facilitate its lawful creditors in securing their

rights would be subject to attack by any stockholder who may seek to further his own private ends by imposing obstacles in the way of its creditors.

That the course pursued in this case is not subject to criticism has been adjudged, although authorities seem unnecessary to sustain so manifest a proposition.

Farmers Loan & Trust Co v. Green Bay Co.,
6 Fed. Rep., 100, 110.

County of Leavenworth v. Chicago, etc., 25
Fed. Rep., 229.

Toler v. East Tennessee, etc., Ry. Co., 67 Fed.
Rep., 168, 177.

But it is urged by appellants that the entry of the Planagan judgment, and the issuance of execution thereon was not a sufficient ground for the action of the trustees in declaring the mortgage indebtedness due, and this because the judgment obtained on the coupons could not be levied on the mortgaged property, and there was no other.

The trust deed provided (Rec., 31) that if a judgment was rendered, and an execution sued out against any of the property of the company, and the company did not forthwith remove such execution, the mortgage security should at the option of the trustees, be enforceable. Exactly that happened. When the mortgage was made all parties were presumably acquainted with the law relating to the levying of executions on mortgaged property under a judgment in favor of a coupon-holder, and with that knowledge they entered into the mortgage. That there was no property belonging to the company other than the mortgaged property was a cogent reason for the action of the trustees in declaring the mortgage indebtedness due.

It is claimed that "forthwith" in the trust deed meant some indefinite time. The company was advised of the proceedings. It knew it had no assets with which to discharge the judgment; that an appeal would merely be productive of delay and wholly unavailing; that its daily expenses, including taxes, insurance, operating expenses, etc., could only be paid, in bad faith, out of the mortgaged property, and it did not desire to take action which would do it no good and which would be inequitable against the mortgagees.

Under the circumstances "forthwith" in this instance had its ordinary meaning of "instantly" or "at once." This was the meaning the parties themselves, the company and the trustees, put upon it. Such construction by them is conclusive.

It is claimed that the entry of the judgment was procured by the trustees or their attorneys. This charge is unfounded. The testimony does disclose the insolvency of the company; its inability to pay its accrued interest, or any part thereof; the absence of all assets on its part except its mortgaged property; that it had exhausted its resources and could not continue in business; that the entry of a judgment had been determined on by its creditor; that the company was aware of this, and of the fact that the object was to give the trustees the possession of the mortgaged property; and that the company, being fully persuaded that such action was for the interest of the company and its stockholders, as well as that of its mortgagees, recognized the situation and facilitated the judgment and possession by the mortgagees. Where in this was there fraudulent collusion? Who was injured? Who obtained anything dishonestly? What minority stockholder was divested of his legal rights? What unlawful purpose was promoted?

XV.

Appellants contend that there was no demand against the company for the payment of interest, and no evidence of any default in such payment.

No demand was necessary.

Article 3, section IV of the mortgage (Rec., 31) provides:

"This security shall become and be enforceable if, after any one of the following events shall have happened, the trustees shall declare the principal and interest owing upon the bonds to be immediately payable."

"IV. If a judgment or order shall be made, or any effective resolution of the company be duly passed, for the winding up of the company, or if a distress, attachment, garnishment or execution be respectively levied or sued out against any of the chattels or property of either company, and such company shall not forthwith, upon such distress, attachment, garnishment or execution being levied or sued out, remove, discharge or pay such distress, attachment, garnishment or execution."

The trustees, on the ground that an execution upon a judgment had been sued out against the property of the company, and that the company had not forthwith discharged or paid the same, declared the principal and interest owing upon the bond to be immediately payable. (Rec., 220, 221, 226.)

Appellants further contend that there was no evidence of any default in the payment of interest.

Mr. Heurtley testifies (Rec., 219, 220, 221) that the interest coupons falling due June 1, 1894, December 1, 1894, and June 1, 1895, had not been paid. No objec-

tion was made to this evidence whereby complainants were required to procure better or other evidence.

The answer of the defendant company, under which appellant stockholders hold any right they have, admitted in its answer that the coupons had not been paid. Mr. Heurtley testified, not necessarily from hearsay, for he may have been an eye-witness of the facts, that they had not been paid. There is no proof tending to show that they had been paid, although such testimony, if the coupons were paid, was easily obtainable. Sufficient proof of a negative fact was thus afforded. What was distinctly alleged by the complainants, and expressly admitted by the defendant company, is established for the purposes of this case, unless the truth of the admission is attacked by affirmative evidence.

The next point for appellants is that there was no evidence that one-third of the bondholders requested in writing, the trustees to declare the principal and interest of the bonds due and payable.

In the first place, there is evidence so showing. It is found on Rec., 229, 230, 231.

Next, it is wholly immaterial whether such proof was made. When the security became enforceable, the trustees, in their discretion, with or without the request of the bondholders, were authorized to take possession. (Rec., 31.) They did take possession, and the receiver succeeded to their possession.

XVI.

The bonds were negotiable instruments.

While it is not material whether or not the bonds were negotiable, in fact they were.

By the provisions of the trust deed (Rec., 29) the bonds were to be substantially in the form indicated in the trust deed. The bill alleged that the bonds were substantially in that form, and it alleged (Rec., 3, 4) with such particularity the contents of the bonds that it was made manifest that they were in all respects in form, as well as in substance, identically the same as provided in the mortgage.

The answer of the defendant company (Rec., 70), admits this. Heurtley testified (Rec., 219), that the contents of the 1,000 bonds were as set forth in the mortgage and in the bill of complaint. The answer of appellants (Rec., 87, 88), admitted it. There is no evidence to the contrary. The bonds issued were therefore legally identical with the form provided by the mortgage.

The company, by the terms of the bonds, acknowledged itself indebted to the bearer in the sum of \$1,000, and promised to pay him that sum in the manner set forth. The company promised (Rec., 26), to redeem on the first day of ember, 1893, 100 of the bonds, and on the first day of December, 1894, 105 of the bonds, and so on, each succeeding year until December 1, 1901, when it engaged to redeem the last of said bonds. Which bonds it would redeem in any particular year was not known, as this was to be determined by drawings, but its promise was to redeem all said bonds on or before December 1, 1901. The heading of the bond, "Due on

or before December 1, 1901," was a part of the bond, but the body of the bond made the same statement in a more extended form. The bonds, then, were absolutely due on or before December 1, 1901. The company reserved the right (Rec., 27), to pay them at earlier dates out of the sinking fund to be created and upon drawings to be had.

The bonds contained every element of negotiability. The form and substance of the bonds, the sum payable, the rate of interest and the time of payment and to whom and by whom payable were all distinctly declared.

But it is immaterial whether they were negotiable. No bond can share in distribution except one showing an absolute indebtedness of the company. If the bonds were not negotiable, and were in the hands of the first holder, no question could arise; if not in the hands of the first holder, the claim could be made in the name of the first holder and for the benefit of the present holder.

XVII.

This is not a case where the court can say that all parties have been guilty of fraud in obtaining from the company stock without payment therefor, and that the court will aid no one, but will leave them in the position in which it found them and where they placed themselves.

The company, through its directors, and on the requisition of the vendors of the mills, executed the mortgage involved. Its action bound the stockholders, including appellants, as well as the company. It authorized the

trustees upon a certain contingency which occurred to take possession of the property. The trustees took such possession and held actual possession when they filed their bill of foreclosure. They stated the facts, and that they held the properties in trust for the bondholders under the trust deed. They are wholly innocent parties and have in good faith expended a large amount of time, labor and expense in taking possession of the property and in attempting to execute their trust through this foreclosure proceeding. If the court declines to act it must restore the property to the trustees from whom it obtained it, and the trustees would then be the owners and in possession of the property under a trust which no court will enforce. That is, they would become absolute owners. The only way to avoid this result is either to sustain the decree of foreclosure for the benefit of the bondholders for whom the trustees claim to hold, or to take the property from the bondholders to the extent of any set-off allowed, on account of stock liability, and to the same extent give it to the company for the benefit of the vendor stockholders who are at least as guilty as the bondholders.

CHARLES A. DUPEE,
MONROE L. WILLARD,
LOUIS MARSHALL,
Solicitors for Respondents.

N^o. 33.

By opposing Petition for Rehear

Supreme Court of the United States.

OCTOBER TERM, A. D. 1889.

CASE No. 16,724.

TERM No. 33.

HARRY W. DICKERMAN, Trustee, ET AL.,

Petitioners,

vs.

THE NORTHERN TRUST COMPANY ET AL.,

Respondents.

**MEMORANDUM AND AFFIDAVITS IN
OPPOSITION TO PETITION FOR
REHEARING.**

LOUIS MARSHALL,
CHARLES A. DUPEE,

Counsel for Respondents.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1899.

CASE No. 16,724.

TERM No. 33.

HARRY W. DICKERMAN, Trustee,
et al.,

AGAINST

THE NORTHERN TRUST COMPANY
ET AL.

Respondents' Memorandum in Opposition to Petition for Rehearing.

The opinion affirming the decree of foreclosure was rendered on January 22, 1900. Since its rendition proceedings have been taken toward carrying out the terms of the decree, and arrangements have been made for entering ancillary decrees in the various States in which the mortgaged property is located.

At this late day a petition for a rehearing is filed, on the sole ground, as alleged, that this Court did not pass upon the first error assigned by the petitioner; "namely, that it was error for the Circuit Court to strike appellants' cross-bills from the files."

This proposition is argued in the petition for rehearing, and a remarkable novelty in procedure has been introduced in the form of *ex parte* affidavits made for the avowed purpose of procuring a modification of the decree of foreclosure and sale.

In view of the elaborate arguments which have already been presented to this Court, it is deemed unnecessary to indulge in a protracted argument for the purpose of demonstrating the error on which this new proceeding on the part of the petitioners is based.

The petitioners fully and elaborately discussed every proposition now urged in their petition for rehearing; and no reason is shown under the practice prevailing in this Court for a renewal of the argument, especially on matters of a most technical character and which involve no merits.

I.

The Court was justified in striking appellants' cross-bill from the files, not only because it was not germane to the original bill, and was a mere repetition of the answer, but also because it attempted to introduce into the records a large number of new parties, most of whom resided beyond the jurisdiction of the Court.

It is well settled that, in a bill to foreclose a trust deed, like that in this case, stockholders are not necessary parties, and they are allowed to become parties by leave of court only when some fraudulent conduct on the part of the bondholders, trustees or other parties is alleged to have occurred which could affect the rights of the trustees to foreclosure proceedings.

Thomas vs. Brownville R. R., 109 U. S., 526.

The Court below, upon application by petitioners, permitted them to become defendants and to answer,

no objection being made by respondents, upon the hypothesis that their answer might disclose a state of facts which would preclude respondents from enforcing the foreclosure of the trust deed, or which would allow it to be enforced only to a limited extent. Petitioners were merely an insignificant part of the stockholders and were not creditors. The theory of their answer was that all the bondholders had acquired stock of the company without payment therefor, or that they were assignees of the bonds with notice of all equities ; that they were indebted to the company for such stock, and that the Court should, in that action, ascertain such indebtedness and set off the same against the bonds. It is apparent that this was matter *in defense* of the action. This view has for obvious reasons been rejected by this Court.

On May 13, 1895 (Rec., 105), the Court gave petitioners leave to file answer and cross-bill. May 18, 1895, the answer of petitioners (Rec., 106) was filed ; on the same day the cross-bill was filed (Rec., 123). Among the defendants named therein were certain parties who, it was alleged, were holders of bonds, as well as stockholders. On January 21, 1886 (Rec., 314), the Court sustained respondents' motion to strike the petitioners' cross-bill from the files. On March 4, 1896, the Court overruled motion of petitioners to vacate the order dismissing their cross-bill (Rec., 325).

The motion to strike the cross-bill from the files rested on the ground that the interlocutory orders of a court of chancery are always under the control of the Court ; that if, on inspection of the cross-bill, it appeared that the matter set forth was not matter to justify a cross-bill, it was as fully within the power of the Court to strike the cross-bill from the files as it was to give leave to file it.

Forbes vs. Memphis R. R., 2 Woods, 323, was heard on motion to vacate an order allowing certain parties to intervene as defendants and to file answer and cross-bill. The Court says :

"The intervenors having, as the Court thought, presented a *prima facie* case, orders were made in accordance with their request. The complainant moved to vacate the order, and the question was raised whether the applicants should have been allowed to intervene."

The Court further said :

"It is questionable whether, in any case where a suit is properly instituted against a corporation, a stockholder of that corporation can, even on a suggestion of fraud on the part of its officers, come in by way of intervention as a party to that suit, and seek to defeat or control the proceedings. An original bill would rather seem to be the proper mode of proceeding."

"And it is in the discretion of the Court whether or not to permit the stockholder to become a party defendant in any case where he is not made such by the bill, and as it is held to be an extreme remedy to be admitted by the Court with hesitation and caution, I think I ought not have allowed it in this case, and ought now to withdraw the order for such allowance. The orders for leave to intervene and file answers and cross-bills will be vacated."

Here the cross-bill was properly stricken from the files for the following reasons :

1. *The bill was not germane to the original bill.*

The original bill was filed by trustees to foreclose a mortgage executed by the sole defendant, the Columbia Straw Paper Company, to the trustees to secure \$1,000,000. The cross-bill alleged a fraudulent overvaluation of property by the company and parties connected therewith as directors, stockholders, etc. It averred that the contract under which the bonds were issued was fraudulent and void, and alleged the invalidity of the bonds and mortgage. It also asserted a liability on the part of bondholders or some of them, as stockholders ; a liability which, if it existed, could only be enforced at the instance of creditors. The question of liability of stockholders could only be

settled in a suit to which all stockholders were parties, and in which all claims of all creditors could be adjusted. Such suit was not germane to a bill to foreclose a mortgage, and such relief could only be had by an independent proceeding.

Lund vs. Skanes Enskilda Bank, 96 Ill., 181.
Foster's Fed. Pr., Sec. 172.

A cross-bill, being an auxiliary bill merely, must be a bill touching matters in question in the original bill. If its purpose is different from that of the original bill, it is not a cross-bill, even though the matters presented in it have a connection with the same general subject.

Cross vs. De Valle, 1 Wallace, 1.

2. *The cross-bill is, in substance, the same as the answer; indeed, it is practically a verbatim copy thereof.*

It alleges, as does the answer of petitioners, the invalidity of the mortgage and the bonds. It asserts, as does the answer, a liability on the part of bondholders as stockholders, and insists that such liability be set off against the claims of such bondholders. Both the answer and the cross-bill admit that every bondholder, or his assignor, paid par for his bonds. The cross-bill prays for an accounting between original complainants and bondholders, which could be done only under answer, if at all. There is no lawful relief prayed for in the cross-bill which could not be fully availed of by way of the answer. It is elementary that in such case a cross-bill is not proper.

A cross-bill setting up no defense except what could be set up by answer will be dismissed.

Am. Co. vs. Marquans, 62 Fed. Rep., 660.

Where the right claimed by a defendant exists simply in excluding the plaintiff from the right asserted by the latter, of course, there is occasion for a cross-bill.

1 Foster's Fed. Prac., Sec. 171 (p. 188).

A cross-bill never should be brought where parties can obtain in the original suit the relief sought for by the cross-bill.

2 *Daniels' Chan. Pr.*, p. 1551.

And where it appears to the Court, from an inspection of the answer and cross-bill, that all the relief to which the defendants are entitled under their cross-bill is available upon answer, the proper practice is to vacate the order allowing the cross-bill to be filed, and to strike the same from the files.

3. *The cross-bill improperly attempted to bring new parties into the suit. This cannot be done.*

Ever since the decision by this Court in *Shields vs. Barrow*, 17 How. (U. S.) 145, there has been no doubt as to this proposition.

In that case Mr. Justice CURTIS said :

“A cross-bill, *ex vi terminorum*, implies a bill brought by a defendant against the plaintiff in the same suit, or against other defendants in the same suit, or against both, touching the matters in question in the original bill” (*Story Eq. Pl.*, Sec. 389 ; 3 *Dan. Ch. Pr.*, 1742).

“New parties cannot be introduced into a cause by a cross-bill. If the plaintiff desires to make new parties he amends his bill and makes them. If the interest of the defendant requires their presence, he takes the objection of nonjoinder and the complainant is forced to amend or his bill is dismissed. If, at the hearing, the Court finds that an indispensable party is not on the record it refuses to proceed. These remedies cover the whole subject, and a cross-bill to make new parties is not only improper and irregular, but wholly unnecessary.”

In “*The Dore*,” 91 U. S., 385, Mr. Justice CLIFFORD said :

“New and distinct matters, not included in the original bill or libel, should not be embraced in the cross-suit, as they cannot be properly examined in such a suit, for the reason that they constitute the

proper subject matter of a new original bill or libel. Matters auxiliary to the cause of action set forth in the original bill or libel may be included in the cross-suit and no others, as the cross-suit is, in general, incidental to, and dependent upon, the original suit."

Shields vs. Barrow, *supra*, is cited with approval in *Randolph vs. Robinson*, 20 *Fed. Cases*, p. 262, where Mr. Justice NIXON dismissed a cross-bill, said, among other things :

" 2nd. It brings in new parties, which is not admissible (*Shields vs. Barrow*, 17 *How.* [58 *U. S.*] 130). 3rd. It introduces new and distinct matters not embraced in the original bill (*Ayres vs. Curver*, 17 *How.* [58 *U. S.*] 595. 4th. Its purpose is different from that of the original bill. The latter concerns the infringement of a patent, and the former is in the nature of a creditor's bill seeking to set aside a fraudulent transfer of property, and aiding in the collection of a judgment (*Cross vs. De Valle*, 1 *Wall.* [68 *U. S.*] 1)."

In *Adelbert College of Western Reserve University vs. Toledo, &c., R. Co.*, 47 *Fed.*, 846, Mr. Justice JACKSON said :

" The cross-petition, filed by Redmond and others, introduced new parties, and changed the character of the original suit in that it was made a general bill or proceeding on behalf of all holders of equipment bonds. As the state court permitted this, it may be assumed to be in accordance with the local law, though it violated the well-settled rule of chancery practice and pleading that a cross-bill should not introduce or make new parties (*Shields vs. Barrow*, 17 *How.*, 145 ; *Odom vs. Owen*, 2 *Bart.*, 446 ; *McGavock vs. Morrison*, 3 *Tenn. Ch.*, 355)."

In *Gregory vs. Pike*, 67 *Fed.*, 845, Mr. Justice PUTNAM said :

" In the way attempted in the present case, there are no pleadings on behalf of the original plaintiff as against Kemp Van Ee, and could be none. The whole basis of making him a party defendant was in the allegations of Swift's answer. This practice, although

prevailing in some localities, is condemned, by necessary implication, in *Shields vs. Barrow*, 17 How., 130, 145, by Justice BRADLEY, in 1897; in *Searles vs. Railroad Co.*, 2 Woods, 621, 625, by Justice BLANCHFORD, in *Drake vs. Goopridge*, 6 Blatchf., 151, and in the notes to *Daniell*, Ch. Prac. (6th Am. Ed.), 286, 287.

"Some of the reasons for this are highly meritorious, other technical—meaning, not technical in the narrow sense of the word, but in its better sense.

"FIRST. Complainants ought not to be compelled into litigation with parties not of their own seeking. One may commence a proceeding very simple in its nature, and be content to take the risk of it; but, if other persons can force themselves into the litigation what he conceives to be simple may become complicated, expensive and interminable.

"SECOND. There are ample remedies in case the plaintiff fails to unite all parties required to do equity, either by a bill of interpleader, or in the methods pointed out by Judge CURTIS, in *Shields vs. Barrow*. Therefore, there is no occasion to resort to the extraordinary proceeding of making new parties without complainant's consent.

"THIRD. As already said, a case made up as this was, presents no proper issue on which to base proofs for the determination of the court. This is not technical in the narrow sense of the word, but leads to extraordinary results as will be seen by reference to the next paragraph.

"FOURTH. The result which may come from bringing in a defendant, as was done in this case, shows the impropriety of it. A defendant thus brought in answers, and complainant refuses to file a replication. The only remedy is for the defendant to move a dismissal as against himself. The result is that he is dismissed from the case, and the case stands exactly as it did before he was brought in. Thus, by failing to reply, the plaintiff is able to bring the bill into its original state. It cannot be said that this can be avoided by setting down the case to be heard on bill and answer, because, as already said, there are no proper allegations on behalf of the new defendant which would enable this to be effectually done."

In *Thurston vs. Big Stone Gap Co.*, 86 Fed., 484, Judge SIMONTON said:

" The complainant and defendant unite in a motion to dismiss the cross-bill as improperly filed by a stranger to the cause. There can be no doubt that a cross-bill is the nature of a defense, and can only be filed by one party to the cause. 'A cross bill' says *Mr. Daniell (Ch. Prac [3d Am. Ed., Perkins] 1649)*, 'is a mode of defense. The original bill and the cross-bill are but one cause. It must be confined to the subject matter of the original bill, and cannot introduce new and distinct matters not embraced in the original suit; and, if it do so, no decree can be founded on those matters.' So, also, *Story, Eq. Pl.*, Section 389: 'A cross-bill *ex vi terminorum* implies a bill brought by a defendant against the plaintiff in the same suit, or against other defendants, or against both, touching the matters in question in the original bill.' "

The Court then cites the language from *Shields vs. Barrow, supra*, which has already been quoted.

In *Richman vs. Donnell*, 53 N. J. Eq., 35, Vice-Chancellor BIRD said :

" The question still remains, can this cross-bill be so amended by introducing Thomas and E. Samuel Dougherty as parties defendant thereto, and the question involved be litigated in the present proceedings? This must be answered in the negative. If the complainant has failed to make all the persons interested parties, the defendant has his remedy by proper leading; that is, by demurrer, or notice of motion to strike out for want of proper parties. If the interests of the defendant be such that it is necessary for him to raise issues not within the scope of the complainant's bill, but which are essential to the establishment of his rights, and to that end new parties must necessarily be brought into the litigation, he can raise such issues by filing an original bill. *Shields vs. Barrow*, 17 How., 129, 144, 145. The motion to strike out the cross-bill should prevail with costs."

To the same effect are

Ladner vs. Ogden, 31 Miss., 340.

Bishop vs. Miller, 48 Miss., 369.

Comfort vs. McTeer, 7 Lea, 662.

Shields vs. Barrow (supra) was recognized as authority in the opinion of Mr. Justice HARLAN, in *Hardin vs. Boyd*, 113 U. S., 764, and that case must be considered as establishing the orderly rule of procedure which must prevail on the chancery side of the Federal Courts, notwithstanding the attack made upon it in the petitioner's brief.

Here the Northern Trust Company filed its bill for foreclosure. The Columbia Straw Paper Company, the mortgagor, practically admitted the allegations of the bill. The petitioners were allowed to answer as intervenors. Being thus permitted to answer on behalf of the corporation, they could only litigate such matters as the mortgagor might litigate as against the mortgagee. Equity Rule 94 would apply to them. Yet there has been no compliance with its provisions.

Not content with the leave to answer, the petitioners attempted, by way of a cross-bill, to bring into Court various bondholders and stockholders of the Columbia Straw Paper Company, many of whom resided beyond the jurisdiction of the Court in which the foreclosure suit was pending, for the purpose of conducting against them an independent litigation, in which the bondholders, as a class, and the respondent had no possible interest. On reflection the Court below recognized the impropriety of such a course. The grievance to which the petitioners are now reduced is that the Court, in the exercise of its discretion, decided that it would not permit the rights of the bondholders to be prejudiced and delayed and their security rendered precarious, by injecting into the litigation matters not at all germane to those set forth in the original bill, through the medium of new and unnecessary parties, with whom the petitioners can fully litigate in an independent action on proper pleadings and under conditions which will not embroil the complainant, which has no possible interest in the controversies which the petitioners thus seek to manufacture.

No legitimate purpose could have been promoted by permitting the cross-bill to stand.

On their own showing the cross-complainants were not entitled to any affirmative relief.

If the relief they sought was to affect the validity of the bonds and mortgage, and to prevent their enforcement, plainly no cross-bill was necessary.

If the object was to establish a stock liability against the owners of some of the bonds, the bill was not conceived for that purpose; nor under the laws of New Jersey relating to corporations, could such bill be filed without bringing in all stockholders as well as creditors.

If the object was to make stockholders and officers liable for fraud, such object could only be attained in an original and independent proceeding and in an action at law and not in a suit in equity.

If the object was to make any of the stockholders or bondholders liable as promoters, that could only be done in an independent action.

It is evident that this Court did not overlook the assignment of error on which the petitioners are relying on this application for a rehearing. In fact, the opinion of Mr. Justice BROWN, proceeding on the assumption that the pleadings raise the question which the petitioners sought to inject into the litigation by their cross-bill, says:

"It is difficult, however, to see how justice can be done by a reversal of the decree appealed from. This is a decree ordering a foreclosure and sale of the property to pay the bonds, to which the bondholders are clearly entitled. It finds that all the bonds were duly issued, negotiated and sold, and that they are outstanding and valid obligations of the company, and that they are now held by a large number of persons who have become the owners thereof for a valuable consideration. These bonds must ultimately be presented for redemption from the proceeds of sale, and we see nothing in the decree appealed from to prevent an inquiry being instituted as to their validity in the hands of their present holders. We are clearly of

opinion that, so far as they were purchased for a valuable consideration by innocent holders, they are not subject to the set-off claimed. The question whether, so far as they are held by parties cognizant of the alleged fraud, they are subject to a set-off, is not one which properly arises in this case, *where the bonds must be treated as an entirety*, but is a defense applicable to each individual bondholder. Whether the corporation, or those who sue in its behalf, may hold them liable for the par value of the stock or are confined to a rescission of the transaction, is a question upon which we express no opinion."

II.

There is no foundation for the claim of the petitioners that the mill-owners were fraudulently deprived of stock to which they were entitled or that there is a difference of \$2,113,000 between the amount paid by Stein for the mill properties purchased by him, and the amount of stock which he received therefor.

The case was tried by the respondents on the theory that the only real issue in the case was as to whether a decree of foreclosure and sale should be rendered in favor of the bondholders as a class.

The validity of the bonds being admitted, a decree of foreclosure would necessarily follow.

The petitioners called as witnesses Emanuel Stein, J. B. Sherwood and Henry M. Wolf, and attempted, in a measure, to give a history of the organization of the Columbia Straw Paper Company.

The respondents, taking the view which has been sustained by the opinion of this Court, went into no

proof as to these matters, called no witnesses, believing that to do so would unnecessarily encumber the record and lead to delay injurious to the bondholders. In other words, the respondents demurred to the petitioners' testimony. That view was sustained by Judge SHOWALTER, by the Circuit Court of Appeals and by this Court.

Had the respondents deemed it important to go into proof it would have been demonstrated that the testimony of Sherwood, who admitted that he had stirred up this litigation for the purpose of coercing the bondholders to pay him \$25,000 for his stock, in so far as he claimed that it was ever contemplated that 70 mills should be united, was utterly false. It could have been shown by written instruments emanating from him that it was never claimed or contemplated that more than 42 mills should be combined, that the mill-owners received all the stock and cash for which they stipulated, and that they were fully cognizant of all the conditions under which the Straw Paper Company was organized. In fact, the testimony which appears on the record in the case of *See vs. Columbia Straw Paper Company*, in the New Jersey Court of Chancery, has abundantly established this proposition.

Moreover, the testimony of the petitioners' witnesses clearly indicates that there never was a difference of \$2,113,000 between the amount paid by Stein for the mills purchased and the amount received by him from the Straw Paper Company. This clearly appears from the following statement, which is verified by the record in this case :

The company issued to Stein in stock and bonds \$5,000,000. Against this he made the following disbursements :

He delivered into the hands of a trustee for the company (Rec., 571 and 552) stock	\$357,200 00
He paid mill men, according to agree- ments, cash	766,000 00
Preferred stock	629,000 00
Common "	1,258,000 00
Notes (Rec., 595, 403)	185,000 00
He paid cash into the treasury (Rec., 401) " " " for organization expenses (Rec., 492)	200,000 00 50,000 00
" " Sherwood (Rec., 381) in stock ..	25,000 00
" delivered with the bonds	600,000 00
He paid additional cash (Rec., 396)	20,000 00
" " " " Defiance Mill " " expenses (Rec., 557)	5,000 00 7,000 00
" " " (Rec., 293)	1,500 00
" " to Dupee, J. W. & W., stock for examination of titles (Rec., 554) and other services con- nected with the consumma- tion of the deed	34,800 00
	<hr/> \$4,138,500 00

This left in his hands but \$861,500 in the capital stock of the company.

He also paid commissions for selling bonds; charges of New York lawyers for services in connection with the option and other contracts and in connection with their execution.

He also paid additional sums for the Clarksville mill, taxes, insurance and other charges (Rec., 577); also additional for Whitewater, a considerable amount of cash and stock (Rec., 579); also additional charge for Lawrence mill (Rec., 580); various other payments (Rec., 581); recording fees (Rec., 593); and expenses in the procuring of options (Rec., 593); increases in price of Richardson Paper Co. (Rec., 577); same in case of

Massillon mill (Rec., 579); also traveling expenses of himself and agents. The foregoing disbursements are, for the most part, not stated in detail, but they show that the amount of \$861,500 should be very largely reduced. And this balance he received for his compensation in common stock. No attempt was made by *petitioners* to ascertain his disbursements beyond what is shown above.

In addition to these facts the record shows that very shortly after the organization of the corporation it became insolvent. Its mortgage has been foreclosed because of its inability to pay the interest on its bonds. It also shows that the stock, which Stein and others are charged with having divided among themselves, in fraud of the mill-owners, was never parted with by them. How, then, could they, by any possibility, have profited from this stock? On the contrary, it can be demonstrated that they have lost vast sums of money by reason of their connection with the corporation, and that, instead of being guilty of a fraud, they have been sufferers through the machinations of the very men who are now leading in the attack made upon them.

The bad faith of the petitioners is apparent from the fact that while in one breath they claim to have been defrauded of a thing of value, because the so-called promoters withheld from them stock which they should have received, in the very next breath they assert that the stockholders are accountable to the corporation for the full value of the stock because it was issued on a fraudulent over-valuation of the mills, and that the stock represented no value.

In fact the mill owners are the only persons who in any way profited through the organization of the Columbia Straw Paper Company, since they received \$800,000 in cash for mills which, when sold, will probably yield but an inconsiderable fraction of that sum, and which, during the progress of this litigation, have been and still continue to be a burden instead of a source of revenue.

III.

Although it is believed that this Court cannot consider affidavits on an application of this character, the respondents have deemed it proper to contradict and explain those which have been presented by the petitioners, for the purpose of showing that there is no reason for modifying the decree of foreclosure herein.

If there ever was a case in which a speedy sale is necessary, this is such a case.

The record itself shows a case of absolute insolvency. The fact that Receiver's certificates have been required, and that the debt of the Receiver has been growing, likewise establishes a potent reason for prompt action.

The affidavits of the respondents indicate additional reasons for expedition. The fact that the property is not earning operating expenses; that the Receiver's claims for services and disbursements are accumulating; that even after sale a fifteen-months period of redemption must expire before title can become perfected in a purchaser; that the present is the most favorable time for an advantageous sale; that the property is deteriorating in value; all indicate that the interests of the bondholders demand that the property shall be disposed of at once.

The litigation has now been progressing for more than five years. Whatever the property may have been worth when the company was organized or when the litigation was commenced, it has been rapidly depreciating in value ever since. The straw-paper industry has during that time been practically destroyed, and a new industry has arisen in its stead.

But even if there is a temporary revival in the straw-paper trade the bondholders should have the benefit of it by being enabled to have a sale take place while it lasts. That slender hope should not be dissipated by once more plunging them into a litigation in which they have no interest, for the benefit of an individual like Sherwood, who, by his own admission, has come into court impelled by motives of the basest character, and who is still apparently egging on this litigation by bolstering it with such an affidavit as he has presented on this hearing.

In it he alleges, *on information and belief*, that an underwriting agreement whereby \$2,113,000 of surplus stock was obtained, has been exhibited to *and seen by parties* in the City of Chicago, Illinois, since the 22d day of January, 1900. He does not say by whom. He does not pretend to have seen it. He does not name his informant. His assertion is, however, absolutely contradicted by the affidavit of Mr. Wolf.

The trial Court, having full knowledge of the condition of the property, the local law regulating foreclosure sales, and the necessities of the situation, made a decree which amply protects everybody interested in the property, and there is no reason why that decree should be disturbed by this Court on the showing which the petitioners have attempted to make extrinsic of the record, and which is completely answered by the respondents' affidavits.

For the same reasons, it would be at this time not only unwise, but absolutely injurious to all interests to provide in the decree for a minimum price at which the property must sell.

As the decree now stands, anybody who is interested in the property can bid at the sale. Competition is open. The petitioners have the same opportunity of buying as the bondholders. All the world may appear and bid.

There is nothing before this Court which would enable it to state what the minimum price should be.

Any attempt to fix it might result in injustice. If fixed at too high a sum it might become necessary to once more apply to the Court for a reduction. If fixed at too low a figure it might have the effect of depreciating the value of the property.

The Court under whose direction the sale is to take place has full power in the premises, and better facilities for determining what would best inure to the advantage of all persons interested in the property to be sold, than this Court.

To ask this Court, which has acquired jurisdiction of this cause by a writ of *certiorari*, to regulate the minutiae of a judicial sale, is to lose sight of its true purposes and functions.

IV.

It is respectfully submitted that the petition for a rehearing should be denied.

LOUIS MARSHALL,
CHARLES A. DUPEE,
Respondents' Counsel.

SUPREME COURT OF THE UNITED STATES.

No. 33. OCTOBER TERM, A. D. 1899.

HARRY W. DICKERMAN, Trustee, *et al.*

VS.

THE NORTHERN TRUST COMPANY
ET AL.Writ of *Certiorari*
to the United
States Circuit
Court of Appeals
for the Seventh
Circuit.STATE OF ILLINOIS, }
County of Cook, } ss.:

WILLIAM D. HOLLIS, being first duly sworn, upon his oath says that he is a resident and citizen of the City of Chicago, in the State of Illinois. That for more than twenty years last past he has been continuously engaged in the business of selling wrapper paper of all grades and descriptions at wholesale, and since the year 1881 he has been the senior member of the firm of Hollis & Duncan, wholesale dealers in wrapping paper and paper bags, located in the City of Chicago and doing business throughout the country, and that during the same period this affiant's said firm has been engaged as agents of various mill-owners and manufacturers of straw wrapping paper located in various parts of the United States.

This affiant further says that he is thoroughly acquainted with the business of manufacturing, buying and selling straw wrapping paper, and that he knows the industry and trade intimately.

This affiant further says that while it is a fact that the price of straw wrapping paper, after the panic of 1893, diminished in the open market to about \$16 per ton, it is also a fact that the price of labor, fuel, lime, acids and straw (all of which enter into the manufact-

ure of straw paper) were lower then and for a number of years succeeding than they have been at any time since; that recently the price of all of the materials that enter into the manufacture of straw wrapping paper, and all supplies that are used in and about straw wrapping paper mills, have increased in value; that during the past year there has been a shortage of straw in the vicinity of the mills and as a consequence the price of straw has within the past few months advanced so that it is now almost double what it was a year ago, and that straw is the principal ingredient in straw wrapping paper, and that it is due more to such advance than to any other cause that the price of straw wrapping paper has advanced to its present market price.

This affiant further says that what is known as "Bogus Manilla" or "Butchers' Manilla" has fallen in price within the last two days five dollars per ton, and that the market for said manilla is very weak; and that the present high price of said Bogus Manilla or Butcher's Manilla is now largely due to a combination between manufacturers of that grade of paper, and that the market price is liable to break still further and Bogus Manilla paper come into serious competition with straw paper.

This affiant further says that he is personally acquainted with the affairs of the Columbia Straw Paper Company, and knows intimately many of its mills, and that he is of the opinion that the possibility of selling said mills to advantage will be greatly diminished if the sale is not made promptly, in order to take advantage of the present improved general commercial conditions throughout the country, as it is uncertain how long such conditions as affecting the straw paper industry will last, and inasmuch as the straw paper industry is at all times uncertain and subject to constant changes.

This affiant further says that in his judgment the sooner the properties are sold the better will be the

results for the mortgaged estate, as the constant rusting out and deterioration of the mill machinery and properties, that is, those which are not rentable, is constantly rendering them less and less likely to produce anything at the mortgage sale, and those that are rentable are more desirable while the industry is profitable, than when the industry is depressed and paper cannot be marketed at cost, as has happened frequently in the course of the straw paper trade.

WM. D. HOLLIS.

STATE OF ILLINOIS }
Cook County. } ss.

I, HENRY G. MILLER, JR., a Notary Public in and for said county, in the state aforesaid, do hereby certify that the foregoing affidavit was subscribed and sworn to before me by the above named William D. Hollis, this fifth day of April, 1900, and that I am duly authorized by the laws of the State of Illinois to administer oaths.

[SEAL.]

HENRY G. MILLER, JR.
Notary Public.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D., 1899.

CASE No. 16,724.

TERM No. 33,

HARRY W. DICKERMAN, Trustee, *et al.*

VS.

THE NORTHERN TRUST COMPANY,
ET AL.On Writ of *Certiorari* to the
United States Circuit
Court of Appeals for the
Seventh Circuit.STATE OF ILLINOIS, }
County of Cook. } ss.

HENRY M. WOLF, being first duly sworn on oath, deposes and says that he has read the printed affidavits of John E. West, Henry S. Carroll and John B. Sherwood, dated respectively March 17, March 19 and March 20, 1900, and also the letter of George P. Jones, Receiver, to Otto Gresham, dated March 14, 1900, all of which are attached to the petition for rehearing in the above entitled cause.

Affiant further says that he is familiar with the litigation in question ; that he is also familiar with the financial affairs of the mortgaged estate since it has been in the hands of said Receiver ; that in said letter from said Receiver it appears that fifteen of the properties are rented at a monthly rental of \$2,100, making total receipts for the year of \$25,200, and the Receiver's estimate of expenses for the same period is \$22,600, but that said estimate does not pretend to include the payment to the Receiver of any sum for services. And this affiant further says that he understands that said Receiver is claiming payment for his services at the rate of \$5,000 per year, and that said

claim for services does not include any claim on the part of the attorneys of said Receiver, for services rendered in and about the said mortgaged estate, and that consequently the estimate of the Receiver, assuming that he should be allowed but \$3,000 a year for his compensation, would make the total expenses for the present year, not less than \$25,600., or \$400. in excess of the total estimated receipts; that said deficiency will be further increased by the amount of compensation which may be allowed to the Receiver's attorneys.

This affiant further says that never since the estate has been in the hands of said Receiver has the annual income, including moneys received for insurance of mills that have been destroyed by fire, equalled the annual expenses and that said Receiver has borrowed a large sum of money which said Receiver says is over \$50,000 toward defraying the expenses of the receivership. So far as fires since the Receiver's appointment are concerned, all or nearly all insurance moneys amounting to many thousand dollars have been collected by the Receiver and used by him in defraying receivership expenses. The moneys for these fires have not, as stated by Mr. Sherwood in his affidavit, been paid to the Northern Trust Company.

This affiant further says that he has had reports from time to time with respect to the condition of the remaining plants comprised in the said estate; that none of said plants has at any time since the beginning of this suit (January 24 1895) been leased; that the buildings have not been occupied and the machinery has not been operated, and as a consequence both buildings and machinery have been deteriorating in value and will continue to deteriorate through non-usage, and that one of the reasons why said plant cannot be leased at this time is because of the great expense that would necessarily be caused in putting them into such condition that they could be used; that in several instances said plants were operated by water power con-

nected therewith, and during the winter and spring seasons the dams and other improvements have been partly destroyed and washed out, and that unless funds are obtained for the purpose of restoring said damaged parts, the water power rights may be wholly destroyed or injured to such an extent that they will be practically valueless.

This affiant further states that the Receiver has no funds with which to make such improvements.

This affiant further says that he has had numerous conferences with the counsel for the respondents herein, and that the minimum estimate of said counsel for Receiver's indebtedness, court costs, services of trustees, solicitors, Receiver and other expenses attending the sale of the mortgaged estate, aggregates \$150,000.00.

This affiant further says that under the law respecting redemption of real estate from sale under mortgage foreclosure, in the State of Illinois, where by far the most valuable properties of the estate are located, there is allowed to the defendant and others, fifteen months for redemption, from the time of the sale, and that the statutes of the states of Michigan, Indiana, Iowa and Kansas, in which some of the properties of the estate are located, also provide for periods of redemption, and that during such period of redemption the title of said properties cannot be made perfect in any purchaser.

This affiant further says that he does not know whether or not the said John B. Sherwood was in fact informed that an alleged underwriting agreement had been exhibited and seen by parties in the City of Chicago, since January 22, 1900, but this affiant says that he was in fact familiar with many of the matters in respect to the organization of said Columbia Straw Paper Company, and that this affiant personally never saw and never heard of any such agreement, and that he is confident if any such agreement had in fact ever existed, that it would certainly have been brought to the attention of this affiant in

some manner at some time. And this affiant further says that he never heard of the claim that such an underwriting agreement existed, prior to the time that such a claim was set up by the petitioners during the progress of this litigation.

HENRY M. WOLF.

STATE OF ILLINOIS, }
Cook County, } ss. :

I, FRED W. RAYMOND, a notary public in and for said county, in the state aforesaid, do hereby certify that the foregoing affidavit was subscribed and sworn to before me by the above-named Henry M. Wolf, this fifth day of April, 1900, and that I am duly authorized by the laws of the State of Illinois to administer oaths.

FRED W. RAYMOND,
Notary Public.

[SEAL.]

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DICKERMAN v. NORTHERN TRUST COMPANY

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH
CIRCUIT.

No. 23. Argued April 5, 6, 1899. — Decided January 22, 1900.

A mortgage, given to secure a large number of bonds, provided that the bonds should become payable if any execution should be sued out against the property of the company, and such company should not forthwith pay the same. A bondholder brought suit before a justice of the peace upon six coupons. The defendant company consented to a judgment and to the issue of an execution; and upon the same day the trustees gave notice that, by reason of such execution having been unpaid, they declared the principal and interest upon all the bonds to be immediately payable; and at once took possession of the property. *Held*: That, while these proceedings were taken by connivance and consent of the parties, they were not collusive in a legal sense, as the debt was honestly due and the plaintiff entitled to the judgment. *Held, also*: That while the judgment was obtained for the obvious purpose of enabling the trustees to declare the mortgage to be due, the court would not inquire into the motives of the parties.

Where a bill is filed to foreclose a mortgage, and the answer admits the bonds secured by such mortgage to have been issued, it is not necessary that the bonds should be put in evidence before a decree of foreclosure and sale.

Bonds payable "to the bearer, or, when registered, to the registered owner thereof," and declared to be due on or before a certain date, are negotiable, though redeemable by instalments determined by annual drawings.

The fact that the mortgagor corporation may have been organized for the purpose of creating a trust or unlawful combination in restraint of trade, is no defence to the mortgage.

The fact that such corporation was organized in pursuance of a fraudulent scheme to defraud certain stockholders who had contributed their properties to the capital stock of the corporation, is no defence to a foreclosure of the mortgage, so far, at least, as the bonds were held by parties innocent of the fraud.

Promoters of a corporation are bound to the exercise of good faith toward all the stockholders, to disclose all the facts relating to the property, and to select competent persons as directors, who will act honestly in the interest of the shareholders, and are precluded from taking a secret advantage of other shareholders.

THIS was a bill in equity filed in the Circuit Court for the Northern District of Illinois by the Northern Trust Company,

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a corporation organized under the laws of Illinois having its principal office in Chicago, and Ovid B. Jameson, a citizen of the State of Indiana, as trustees, against the Columbia Straw Paper Company, a corporation organized under the laws of the State of New Jersey, to foreclose a trust deed of some thirty-nine paper mill properties, leaseholds and water powers, situated in thirty-two different counties and in nine different States. This deed, which was dated December 31, 1892, was given to secure the payment of one thousand bonds of the paper company of one thousand dollars each, with coupons bearing interest at six per cent per annum, payable half yearly. These bonds were issued and delivered to one Emanuel Stein, in part payment for the properties acquired by it from him.

The bill, which was in the ordinary form of a foreclosure bill, averred that by the terms of the bonds it was agreed by the paper company that it would redeem, on the first day of December, 1893, one hundred of such bonds, and annually thereafter until December 1, 1901, a similar number, and that the principal of such bonds should become due, if the paper company should make default for a period of three months in the payment of any interest, and an election so to do were given in writing; that by the terms of the mortgage or deed of trust, it should become enforceable, provided default were made in the payment of any one of the bonds which had become due and payable for one month thereafter; or, if default should be made in the payment of interest on any of such bonds, or in the performance of any of the covenants or conditions in the bonds or mortgage, and such default should continue for three months after written demand for payment or performance by the Trust Company, or if a judgment or order should be made, or any effective resolution adopted by the paper company for the winding up of such company, "or if a distress, attachment, garnishment or execution be respectively levied or sued out against any of the chattels or property of either company, and such company shall not forthwith upon such distress, attachment, garnishment or execution being levied or sued out, remove, discharge or pay such distress, attachment, garnishment or execution."

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The bill alleged as the only grounds for enforcing the security of the mortgage, (1) that the mortgagor had made default in redeeming or discharging the several amounts of bonds designated in the mortgage and bonds for redemption; (2) in failing to pay certain instalments of interest; and (3) in failing to pay a certain execution sued out on January 22, 1895, against the property of the company upon a judgment obtained against it by one James Flanagan before a justice of the peace of Cook County, Illinois. That by reason of such default complainants had declared the principal and interest of the bonds to be immediately due and payable.

The bill contained the usual prayer for foreclosure and sale, and for a receiver and an injunction against disposing of any of the mortgaged property. The trustees having taken possession of the property, a receiver was appointed by consent of the company upon the same day the bill was filed.

The answer of the paper company admitted the material allegations of the bill, averred its inability to pay its debts, and asserted that the property covered by the mortgage was worth much more than the amount of the bonds and the indebtedness of the company.

A few days thereafter Dickerman, together with others, filed a petition setting forth that they, with other stockholders of the defendant company, had been injured by the wrongful and fraudulent manner in which its securities had been issued; that the defendant and its defence were under the control and direction of the bondholders and their trustees; that the directors were not fitted to conduct the suit by reason of their adverse interests, and prayed to be made defendants and be allowed to plead, answer or demur to the bill, and to file a cross-bill. This was allowed.

Thereupon petitioners filed their answer admitting the execution of the bonds and mortgage, but denying that the bondholders were entitled to the benefit of the trust created by the mortgage; denied that all of the one thousand bonds were duly issued, negotiated and sold, or that they were outstanding and valid obligations of the mortgagor; and also denied that all of such bonds and coupons had come into the posses-

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sion of, or were held by, persons who had become the owners thereof in good faith and for a valuable consideration.

They further set forth in great detail the manner in which the combination had been formed in the summer of 1892, to purchase seventy paper mills with their plants, appliances and good will, by means of securing from their respective owners option contracts whereby each owner agreed to sell his property to the combination for a stated sum in cash, and the residue in the capital stock of the corporation to be organized, to which the seventy paper mills, with their properties, etc., were to be conveyed; that the corporation so to be formed was to be capitalized at \$3,000,000 of common and \$1,000,000 of preferred stock, to be issued at par, in part payment for the mills at the option prices so obtained, until the whole amount was exhausted, and that in such contingency the corporation so to be organized was to have the power to issue \$1,000,000 of its bonds to complete the payment for said mills; that after options had been obtained upon thirty-nine mills, the total purchase price of which was \$2,788,000 in cash, stock and notes the parties met to consider them, and decided that it would be necessary to provide \$1,000,000 to purchase the property and furnish the running capital; that the combination thereupon caused the option contracts to be transferred to one Emanuel Stein, and then arranged to divide up and to fraudulently appropriate to themselves \$2,113,000 of the capital stock of the proposed corporation, which would not be required to pay for the thirty-one mills which were left out of the combination.

That after having arranged how many of the one thousand mortgage bonds of the new corporation each member of the combination was to receive for an equal amount in cash, and how many shares of preferred and common stock each was to receive gratuitously with bonds, they caused articles of incorporation to be filed December 6, 1892, in the State of New Jersey, to organize the paper company with a capital stock of \$4,000,000, with themselves and their agents as directors. That on December 14, 1892, they procured Stein, who held the option contracts for the purchase of the thirty-nine mills,

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to present to the stockholders a proposition to secure the titles to the thirty-nine mills, and to convey the same to the new corporation for \$5,000,000, as follows: \$1800 in cash; \$1,000,000 in first mortgage bonds; \$1,000,000 in preferred and \$2,998,200 in the common stock of the new company; that this proposition was accepted by the stockholders and also by the directors, and the property conveyed to the company; the bonds and capital stock divided among the members of the combination, as had been previously arranged, and that such persons still owned and were still liable for their capital stock in a much larger amount than the bonds of the company; and that the latter were owned by the same persons, who were liable on their stock. That the Columbia Straw Paper Company having been organized for the purpose of taking such conveyances, and thus consolidating said mill plants, their contention was, that by reason of fraudulent overvaluation of the various mill plants and properties upon which options of purchase had been taken, a defence in the nature of a set-off existed in favor of the company against such bondholders as were also stockholders to the extent of the unpaid part of the stock held by them.

The answer also contained an averment that the judgment and execution in favor of Flanagan before a justice of the peace was a fraudulent and collusive act on the part of the managers of the defendant company, in order to give the trustees the right to begin this foreclosure proceeding; that in pursuance of this the directors had fraudulently neglected and refused to pay six interest coupons on the bonds owned by Flanagan, in order that a suit might be instituted thereon; that the defendant corporation appeared upon the return of the summons, consented to an immediate trial, made no defence, but allowed judgment to be entered and an execution to issue on the same day, and that the firm of lawyers who had devised this proceeding acted as solicitors for the trustees in filing the bill of foreclosure. It was denied that the Straw Paper Company was insolvent, and was averred that the complainants and others had combined to wreck the company and defraud the defendant stockholders by withdrawing from

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the treasury of the company bonds and stock to the value of \$3,000,000, which the complainants held in trust for the company, and that the same are assets and not liabilities, as in the bill of complaint alleged.

Defendants also filed a cross-bill for an accounting in respect of the transactions complained of, especially in reference to the issue of the alleged mortgage bonds and the preferred and common stock; and if, on such accounting, anything should appear to be due from any of the defendants to the Straw Paper Company, a decree might be entered for the payment of the same, and that the receiver theretofore appointed might be removed and a proper and practical person be appointed receiver in his stead, with power to take possession of the property, as well as of the books, papers and writings of the Columbia Straw Paper Company, and that an injunction issue restraining the officers and directors of the company from interfering with his possession. The cross-bill was subsequently stricken from the files.

Defendants later amended their answer, alleging that the bonds and mortgage were part of an illegal scheme to create a monopoly, regulate prices and prevent competition among the mills purchased, who had, prior to the consolidation, been in active competition with each other.

The case was referred to a master to take proofs and report the testimony. He reported that the material allegations of the bill were sustained by the proofs; that all of the one thousand bonds, set up in the bill, were negotiated and sold and were outstanding and valid obligations of the company; that the company made default in redeeming the first one hundred bonds, maturing December 1, 1893, as well as one hundred and five bonds maturing December 1, 1894; that the company also made default in the payment of interest upon its bonds due June 1, and December 1, 1894, though the same was duly demanded; that by reason thereof, and of the execution obtained by Flanagan, the complainants declared the principal and interest of the entire issue to be immediately due and payable; that they had been requested in writing by the holders of more than one third of the bonds to enforce the provisions of

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the deed of trust; that the company had been for some time and was still insolvent; that at the date of the report there was due upon the bonds, principal and interest, \$1,249,632.86; that the contention of the defendants, that the bonds were not issued and outstanding, was not supported by the testimony; that the contention, that the stock of the company, which passed into the hands of Emanuel Stein by virtue of his contract with the company, was not fully paid-up stock, was also not supported; that as a matter of fact such stock was received by Stein as fully paid stock, and that as a matter of law no question in regard to it between the stockholders of the company could be inquired into in this proceeding. He further found that there were no creditors of the company except those represented in this suit.

The defendant stockholders, who were complainants in the cross-bill, filed exceptions to this report, which, upon a hearing by the court, were overruled, and a decree of sale *nisi* entered in favor of the original complainants. *Northern Trust Co. v. Columbia Straw Paper Co.*, 75 Fed. Rep. 936. On appeal to the Circuit Court of Appeals for the Seventh Circuit the decree of the Circuit Court was affirmed. 53 U. S. App. 270. Whereupon the appellants applied for and were granted a writ of certiorari from this court.

Mr. Otto Gresham and Mr. John S. Cooper for Dickerman.

Mr. Louis Marshall for the Trust Company. *Mr. Charles A. Dupee and Mr. Monroe L. Willard* were on his brief.

MR. JUSTICE BROWN, after stating the case, delivered the opinion of the court.

This case presents primarily the question whether a minority of the stockholders of a corporation have a right to intervene in the foreclosure of a mortgage upon the corporate property for the purpose of showing that the property was sold to the corporation by the connivance of the mortgagees at a gross overvaluation, and to compel the bonds held by them to be

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subjected to a set-off of their indebtedness to the corporation for unpaid stock.

It should be borne in mind in connection with the several defences set up by the intervenors that they do not appear here in the capacity of creditors, but as stockholders; that their rights are the rights of the corporation and must be asserted and enforced through the corporation, and upon the theory that the latter has or threatens, by collusion or otherwise, to neglect the proper defence of the foreclosure suit. *Dodge v. Woolsey*, 18 How. 331, 341, 343; *Koehler v. Black River Falls Iron Co.*, 2 Black, 715; *Bronson v. La Crosse &c. Railroad*, 2 Wall. 283; *Davenport v. Dows*, 18 Wall. 626; *Dewing v. Perdicaries*, 96 U. S. 193; *Hawes v. Oakland*, 104 U. S. 450, 460; *Greenwood v. Freight Co.*, 105 U. S. 13; *Detroit v. Dean*, 106 U. S. 537; *Cook on Stockholders*, §§ 645, 659, 750.

There are several preliminary objections made by the intervenors to this foreclosure which require to be disposed of before entering upon the proper merits of the case. They are —

1. That the bonds were not due. This in a certain sense is true. The bonds were peculiar in this respect: There was no date fixed for their maturity, but there was a provision that on the first day of December, 1893, and upon the same date in every succeeding year, the company would redeem a certain number of bonds to be ascertained by drawings made under the direction of the Northern Trust Company in the month of November in each year. That immediately after such drawing the company should cause the numbers of the bonds drawn for redemption to be published in New York and Chicago newspapers, and that every bond so drawn should become redeemable on the first day of December next thereafter. There was no evidence that any such drawing was ever made, and the Trust Company did not institute their foreclosure proceedings upon the theory that any of the bonds, by their terms, had matured.

There was, however, a provision that the mortgage should become enforceable, if the trustees should declare the princi-

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pal and interest upon the bonds to be immediately payable, after any execution should be levied or sued out against the chattels or property of the company, and such company should not forthwith, upon such execution being levied or sued out, remove, discharge or pay the same.

It appears that one James Flanagan, who was a bondholder, brought suit against the company on January 22, 1895, upon six coupons. The action appears to have been brought directly or indirectly through the legal firm who were also counsel of the defendant company. Summons was issued, returnable January 28, 1895, and served upon the president of the company at five o'clock P.M. on the day it was issued (22d). On the same afternoon, the president appeared before the justice of the peace and consented to an immediate trial, which resulted in a judgment for \$180. Execution being sworn out, it was issued and placed in the hands of the constable at about half-past five o'clock of the same day. Later on the same day the trustees gave notice to the company that by reason of such execution having been unpaid, they declared the principal and interest upon the one thousand bonds named and described in the trust deed to be immediately payable, and upon the same night the trustees took possession of the property of the company in the vicinity of Chicago, the officers and agents of the company making no resistance. It also appeared that the president of the company had been in consultation with the attorneys of the trustees about foreclosing the mortgage and taking possession of the property, for several days prior to January 22.

Upon this state of facts the master, to whom the case was referred, reported that the contention of the defendants, that the procurement of the Flanagan judgment was the result of a collusion of the company, was not supported by the testimony. This was also the opinion both of the Circuit Court and of the Court of Appeals.

We have no doubt that this judgment was collusive in the sense that it was obtained by the plaintiff and consented to by the defendant company for the purpose of giving the trustees a legal excuse for declaring the principal and interest of

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the mortgage to be due, and to give authority for a foreclosure. But this did not constitute collusion in the sense of the law, nor does it meet the exigencies of the petitioners' case. Collusion is defined by Bouvier as "an agreement between two or more persons to defraud a person of his rights by the forms of law, or, to obtain an object forbidden by law," and in similar terms by other legal dictionarians. It implies the existence of fraud of some kind, the employment of fraudulent means, or lawful means for the accomplishment of an unlawful purpose; but if the action be founded upon a just judgment, and be conducted according to the forms of law and with a due regard to the rights of parties, it is no defence that the plaintiff may have had some ulterior object in view beyond the recovery of a judgment, so long as such object was not an unlawful one. In *Morris v. Tuthill*, 72 N. Y. 575, which was also a suit to foreclose a mortgage, the court observed: "The facts that the assignor of a mortgage and his assignee acted in concert with a view unnecessarily to harass and oppress the mortgagor, and with intent to prevent payment, to the end that the equity of redemption might be foreclosed, and they become purchasers for less than the value, do not constitute a defence to an action to foreclose a mortgage. So, also, the facts that the assignee took title from motives of malice, and solely with the view to bring an action, and that the assignor assigned from a like motive, and without due consideration, furnish no defence, and do not impeach plaintiff's title. It is sufficient to sustain the action that the mortgage debt is due, has been transferred to and is owned by plaintiff; and the mortgagor can only arrest the action by paying or tendering the amount due."

If the law concerned itself with the motives of parties new complications would be introduced into suits which might seriously obscure their real merits. If the debt secured by a mortgage be justly due, it is no defence to a foreclosure that the mortgagee was animated by hostility or other bad motive. *Davis v. Flagg*, 35 N. J. Eq. 491; *Dering v. Earl of Winchelsea*, 1 Cox Ch. 318; *McMullen v. Ritchie*, 64 Fed. Rep. 253, 261; *Toler v. East Tenn. &c. Railway*, 67 Fed. Rep. 168.

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Now, in this case there is no doubt that Flanagan's claim was an honest one; that the coupons upon which he brought the suit were due and unpaid, and there is nothing to show that he would not have been entitled to a judgment upon them if the defendant had made a contest. The company was notoriously insolvent. Its coupons for 1894 and 1895 were unpaid. All its property was subject to the mortgage given to secure its bonds. It could no longer continue its business. Flanagan had a perfect right to bring suit, and under these circumstances the president of the company was guilty of no wrong in consenting to a judgment and to the immediate issue of an execution. The company was not bound to defend if there were no defence. The forms of law were complied with. It would doubtless have been more seemly if judgment had not been entered until the return day of the summons, if the execution had not issued until the expiration of the twenty days allowed by law, and if the trustees had not been so alert in seizing upon the non-payment of the judgment as an excuse for declaring the principal and interest of the bonds to be due. But this haste did not render the judgment or execution void. If the company had become insolvent and could no longer carry on its business, it was not only its legal obligation, but its moral duty, to surrender the mortgaged property to the mortgagees, in order that the latter might protect their interests. If the corporation saw fit to consent to a foreclosure, a minority of stockholders cannot question their right to do so. The fact that the Flanagan action was undertaken for the purpose of enabling the trustee to declare the principal and interest due does not invalidate the proceeding so long as there was a debt due, an action properly conducted to recover it, and the object to be gained was not an illegal one.

The reports of this court furnish a number of analogous cases. Thus, it is well settled that a mere colorable conveyance of property, for the purpose of vesting title in a non-resident and enabling him to bring suit in a Federal court, will not confer jurisdiction; but if the conveyance appear to be a real transaction, the court will not, in deciding upon the

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question of jurisdiction, inquire into the motives which actuated the parties in making the conveyance. *McDonald v. Smalley*, 1 Pet. 620; *Smith v. Kernochen*, 7 How. 198; *Barney v. Baltimore*, 6 Wall. 280; *Farmington v. Pillsbury*, 114 U. S. 138; *Crawford v. Neal*, 144 U. S. 585.

The law is equally well settled that, if a person take up a *bona fide* residence in another State, he may sue in the Federal court, notwithstanding his purpose was to resort to a forum of which he could not have availed himself if he were a resident of the State in which the court was held. *Cheever v. Wilson*, 9 Wall. 108, 123; *Briggs v. French*, 2 Sumn. 251; *Catlett v. Pacific Ins. Co.*, 1 Paine, 594; *Cooper v. Galbraith*, 3 Wash. 546; *Johnson v. Monell*, Wool. 390. So, also, in cases where a surety attacks a judgment against his principal upon the ground that it was obtained for the purpose of defrauding him, it must be made to appear either that no debt existed against the principal, or that the amount was grossly exaggerated for the purpose of defrauding the surety. *Parkhurst v. Sumner*, 23 Vermont, 538; *Annett v. Terry*, 35 N. Y. 256; *Dougherty's Estate*, 9 Watts & S. 189; *Thompson's Appeal*, 57 Penn. St. 175; *Willard v. Whitney*, 49 Maine, 235; *Pierce v. Jackson*, 6 Mass. 242; *Great Falls Mfg. Co. v. Worcester*, 45 N. H. 110; *Berger v. Williams*, 4 McLean, 577; *Feaster v. Woodfill*, 23 Indiana, 493. So, too, it has been held that a person may purchase stock in a corporation for the very purpose of bringing a stockholder's suit, and that the law will not inquire into the motive which actuated his purchase. *Bloxam v. Met. Railway*, L. R. 3 Ch. App. 337; *Seaton v. Grant*, L. R. 2 Ch. App. 459; *Elkins v. Camden & Atlantic Railroad*, 36 N. J. Eq. 5.

In this connection it is claimed that the Trust Company was premature in declaring the principal and interest of the mortgage to be due, although the mortgage provided that such declaration might be made if the company should not "forthwith," upon execution being sued out, discharge or pay it. It is insisted that the company was entitled to a reasonable time in analogy to certain cases which hold that in insurance companies the word "forthwith" carries this signifi-

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cance. But "forthwith" is defined by Bouvier as indicating that "as soon as by reasonable exertion, confined to the object, it may be accomplished. This is the import of the term. It varies, of course, with every particular case." In matters of practice and pleading it is usually construed, and sometimes defined by rule of court, as within twenty-four hours. Anderson (Law Dict.) says of the word that it "has a relative meaning, and will imply a longer or shorter period, according to the nature of the thing to be done." There are many cases which turn upon the question whether a person was not too late in complying with a requirement that a thing must be done forthwith, but we can recall none where he has been held in default for doing such act too speedily, and as the corporation in this case made no objection to an instant declaration by the trustees that they would treat the principal and interest of the mortgage as due, it was not within the power of the appellants to set up the fact that they acted with too great haste. It is one of those matters within the discretion of the directors, and we do not think the appellants are in a position to impugn their judgment. *Railway Co. v. Alling*, 99 U. S. 463, 472; *Cook on Stockholders*, § 750. Possibly the mortgagor or the unsecured creditors of the mortgagor might have had some reason to complain, but, so far as the mortgagees are concerned, the action seems to have been taken in their interest and to have redounded to their benefit.

2. That the bonds were not put in evidence prior to the decree of foreclosure and sale. This objection is unsound. The foreclosure suit was by mortgagees in possession. The bill averred and the answer of the company admitted the issue of one thousand bonds of one thousand dollars each, with the accompanying interest coupons, and the answer of the intervenors admitted that these bonds were issued and certified by the Trust Company, and only denied that *all* of them were duly issued, negotiated and sold, and that they were valid and outstanding obligations. The testimony for both parties showed that the entire number were certified and issued by the company, and the master also made a finding to the same effect. He also found that they were valid

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obligations of the company, and that there was due thereon \$1,249,632.86. Given the number of bonds and coupons, the amount due was a simple matter of mathematical computation. No further proof was required to justify a decree of foreclosure and sale. Nothing could be gained by an order to produce the bonds before the master prior to such decree. The complainants were trustees under the mortgage, and had no personal interest in the bonds, but held the legal title to the mortgage, which they were foreclosing for the benefit of others. This power was expressly given them by the mortgage. It was sufficient to prove that the bonds were valid and were outstanding obligations of the company, and it was not necessary to show in whose hands they were or to require their production. Indeed, an order to that effect could only result in delaying a decree indefinitely, since in cases of corporate mortgages the bonds are often widely scattered, owned in foreign countries, or by persons totally ignorant that a suit for foreclosure is in progress. Months and even years might be required to produce them all. The practice has been to order a decree for foreclosure and sale without their production. *Guarantee Trust Co. v. Green Cove Railroad*, 139 U. S. 137, 150; *Toler v. East Tenn. &c. Railway Co.*, 67 Fed. Rep. 168, 180.

When, after a sale, the case is referred to a master for proof of claims against the proceeds of sale, they must of course be brought into court for payment and cancellation, and the title of each holder must then be proved.

3. That the bonds were not negotiable. This objection is also unsound. The bonds were payable "to the bearer, or, when registered, to the registered owner thereof;" were declared to be due on or before December 1, 1901, and were redeemable by annual drawings conducted under the supervision of the Trust Company. It was not known which bonds it would redeem in any one year, as this was to be determined by drawings; but its promise was to redeem all of them before December 1, 1901. Considering the nature of corporate bonds, and the difficulty of redeeming so large a number and amount upon any one day, we do not think the fact that they were

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redeemable by instalments, determined by drawings, impaired their negotiability. Promissory notes much more indefinite as to their time and payment have been held to be negotiable, *Stevens v. Blunt*, 7 Mass. 240; *Goodloe v. Taylor*, 3 Hawks, 458; *Cota v. Buck*, 7 Metc. 588; and in *Goshen &c. Turnpike Road v. Hurtin*, 9 Johns. 217, it was held directly "that a promise in writing to pay a certain sum" in such manner and proportion, and at such time and place, as he shall from time to time require, is a promissory note.

It is at least doubtful whether the fact that these bonds were or were not negotiable is a material one; but assuming it to be such, we think they were negotiable within the meaning of the law.

4. That the Circuit Court should have allowed the answer to be amended for the purpose of showing that the organization of the defendant company, and the execution of the bonds and mortgage, were parts of a scheme to form a trust or unlawful combination in restraint of trade. After the answer of the defendant company and the original answer of the appellants—who had been admitted as defendants by leave of court—were filed, and all the proofs had been taken, appellants filed an amendment to their answer, setting up that the bonds and mortgage were parts of a combination or trust in restraint of trade, and in direct violation of the act of Congress of July 2, 1890, "to protect trade and commerce against unlawful restraints and monopolies," and also in violation of the act of the general assembly of Illinois "to provide for the punishment of persons, partnerships or corporations forming trusts, pools and combines, and mode of procedure and rules of evidence in such cases," approved June 11, 1891. The answer set out the facts at length, averring that there were seventy mills engaged in the manufacture of straw paper, all in competition with each other, and that the company obtained control of forty of the mills and operated sixteen. This amended answer was filed without objection from court or counsel, and still remains as part of the pleadings in the case.

Prior, however, to this amendment being filed, and on January 10, 1896, Charles A. Miller filed his petition to be

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made a party defendant and to set up the trust or monopoly defence. His petition, which sets out with great particularity his theory of a trust, was with its affidavits and all the testimony in the case submitted to the court, carefully examined and finally denied.

But admitting everything that can be claimed for the combination in this connection, we do not see how it can affect materially the foreclosure of this mortgage. If this were a proceeding in *quo warranto* to attack the organization of the corporation, or an indictment under the statute of Illinois, or an action against a member of the combination to enforce any of the provisions of the original contract, the validity of such contract would become an important question. But in a suit to foreclose a mortgage upon the property of the concern, it is difficult to see how the purpose for which the corporation was originally organized can become a material inquiry. So long as the corporation existed, it had the power to create a mortgage, and when that mortgage became due the trustee had a right to foreclose. This trustee was no party to the alleged combination, and the fraud, if any existed, was wholly extrinsic to the mortgage. It would seem a curious defence if a mortgagor could set up against the mortgage that the property covered by it was used for an illegal purpose unknown to the mortgagee, as, for instance, gambling, and therefore that the mortgage was invalid.

5. That the court erred in holding that the evidence did not support the contention of the petitioners, that there is a liability, enforceable in this cause, against the bondholders holding stock that is not paid for, to the Columbia Straw Paper Company, amounting to \$2,113,000, and which indebtedness should be set off against the indebtedness on each bond. This proposition involves the real merits of the case. The gravamen of the petitioners' contention is that the bondholders should be held for the difference between the amount paid by Stein for the thirty-nine mill properties, namely, \$1,887,000 of stock, and the amount for which he subsequently turned them over to the paper company, namely, four millions of dollars in stock, the difference being \$2,113,000.

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In support of this contention petitioners introduced evidence of the following facts:

In October, 1892, there were about seventy straw paper mills doing business in the Northwestern States, and having a practical monopoly of the manufacture of straw paper.

Some efforts had been made to combine them in a single corporation, but they had proven unsuccessful, when, in February, 1892, the scheme was revived by one Stein, who represented a firm of New York capitalists; certain other capitalists in Buffalo, who were represented by one Beard, and still others in Chicago.

As the result of certain conferences between Stein and some others who had previously endeavored to obtain options, Philo D. Beard and Thomas T. Ramsdell undertook to obtain options for the purchase of these mills, to be turned over to a corporation to be organized by Beard and Ramsdell with a capital stock of \$4,000,000. The options did not specify the number of mills that were to join, although it seems to have been understood that the entire seventy were to be gotten in if possible, but as a matter of fact Beard and Ramsdell obtained options upon only thirty-nine. The options show clearly that it was intended to turn the properties over to the new corporation. For these properties they agreed to pay \$2,788,000, part in cash (\$766,000), part in preferred stock (\$629,000), part in common stock (\$1,258,000) and part in notes (\$135,000) of the new company. The stock payments thus aggregated \$1,887,000.

Instead of calling the mill owners together and organizing a new corporation, Beard and Ramsdell turned over the options to Stein; and articles of incorporation were drawn by a member of the New York firm under the laws of New Jersey, which were executed by Beard, one Taylor, a clerk in the office of the New York firm, and one Heppenheimer, a New York lawyer residing in New Jersey, each of these subscribing for four shares, aggregating twelve shares out of a total issue of 40,000 shares. These articles of incorporation were filed in the office of the Secretary of State on December 6, 1892. The three incorporators met immediately in Hoboken as stockholders, and elected themselves as directors with six

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others, two of whom were members of the New York firm, and the others clerks in their office. Not a single mill owner who expected to become a stockholder was placed on the board at this time, although representations had been made by the syndicate that a majority of the stockholders would be mill owners. Philo D. Beard was elected president and Samuel H. Guggenheimer secretary.

Immediately thereafter, and on December 10, 1892, Stein, who held all the options, assuming to act as an independent owner, though he had obtained the options for the benefit of the company, and had promised to pay for them in the stock of the company, made a proposition in writing drawn by a member of the New York firm to this board of directors to sell the thirty-nine mills to the paper company for \$5,000,000, being an advance of \$2,113,000 over what he had agreed to pay for them. This proposition was drafted by the New York firm, and the stockholders upon the day the proposition was received had another meeting and instructed themselves as directors to accept. They authorized Beard as president to enter into a contract with Stein, which was accordingly done. Stein and wife acknowledged it before a clerk in the office of the Chicago firm.

This board of directors served for only two weeks, when they were succeeded by another board composed of Beard, Stein, Heppenheimer and others mostly in their interest.

For the next month the members of the Chicago firm were busy in getting the mill owners to deposit their title deeds and abstracts, but nothing appears to have been said to them of what had occurred in New York. The New York firm engaged itself in raising money to pay for the bonds, and deposited over \$800,000 with the Trust Company, to be disbursed to the mill owners, which money should be checked out by its personal agent, who proceeded to make settlements with the mill owners and take over their properties by giving cheques payable to Stein, who indorsed them over. Stein testified that he did not understand the plan, but left everything to an agent to attend to, though it involved Stein paying out one million in cash and four millions in stock. The

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principal parties in interest did not seem to trust Stein, and attended to the payment of the purchase price themselves.

It appears that 957 shares of preferred and 4441 shares of common stock went directly into the hands of Beard; 859 shares of the preferred and 4357 shares of common stock to the New York firm; to the friends of this firm 420 shares of preferred and 840 shares of common stock; to the Chicago firm, 172 shares of preferred and 515 shares of common; to a trustee, 1110 shares of preferred and 2232 shares of common; to Stein, himself, 270 shares of preferred and 2377 shares of common. No money consideration passed from Stein or from any of these parties to the company for any of this stock.

It thus appears that the syndicate received 3788 shares of preferred and 14,751 shares of common stock from the treasury of the company, aggregating 18,459 shares of the par value of \$1,854,900. As it took but \$1,887,000 of the stock at par to acquire the mills, this leaves \$258,100 unaccounted for. This is explained in the testimony of Sherwood, where he says that this stock went to the promoters and their friends. Add this \$258,100 to the \$1,854,900 above stated, and it amounts to \$2,113,000, which is the total capitalization of \$4,000,000, less the \$1,887,000 that went to the mill owners.

As thus organized the corporation began business. It raised the price of paper six dollars a ton, which invited competition, and a new corporation was organized by the New York firm under the laws of New Jersey, called the Paper Commission Company. The sole function of this company was to sell the product of the Straw Paper Company, and the other paper mills which had not given options, the Straw Paper Company paying the new company a commission of twenty-five per cent for selling all its paper, reducing the net price realized by the Straw Paper Company to less than it had obtained when selling its own paper.

The mill owners, although the largest stockholders, never seem to have been treated as a factor in these operations, and in some way or other the syndicate got possession of \$2,113,000 in stocks and bonds, which they appeared to have used in furtherance of their own interests.

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From this testimony it would appear :

(1.) That the options were to be secured for the benefit of a corporation to be organized by Beard and Ramsdell, and that the mill owners were to be paid principally in the stock of such corporation ;

(2.) That Stein, the successor of Beard and Ramsdell, had no title personally to the property he pretended to sell, but that he held it as trustee for the corporation to be organized ;

(3.) That the corporation was organized by three parties who held but twelve shares out of forty thousand shares, one of the three being a clerk in the office of the New York firm and the other two acting in their interest ;

(4.) That a member of the New York firm drew the proposition by which Stein offered to sell these properties to a corporation, in which the member himself was the only responsible stockholder ;

(5.) That the owners of the mill properties knew nothing of the organization of the corporation, or of its acceptance of Stein's proposition to sell his properties to the Straw Paper Company ;

(6.) That the stock was fixed at \$5,000,000 upon the idea that seventy mills would join in the combination, but as a matter of fact only thirty-nine joined ; that but \$2,788,000 was paid for these properties, and that \$2,113,000 of stock was distributed among the parties who got up the corporation without any distinct consideration being received ;

(7.) That the mill owners received stock which was worth but one half the value of that which they supposed they would receive.

Assuming these facts to have made out a case of fraud in the organization of the Straw Paper Company, and in the purchase of the mill properties, it is difficult to see how they affect the validity of the bonds as a whole, the right of the trustee to foreclose, or how they can entitle the complainant to compel the bondholders, so far at least as they were innocent holders, to set off their indebtedness to the paper company for stock, against the indebtedness of the company upon the bonds.

The company did, in fact, go through the form of an organ-

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ization under the laws of the State of New Jersey, and while the first board of directors seem to have been mere tools in the hands of the New York firm with no real interest in the company, they appear to have conformed to the letter of the law, and until formally dissolved the corporation had a legal existence. As thus organized it accepted a proposition from Stein to purchase the mills for \$5,000,000, namely, \$1800 in cash; \$1,000,000 in bonds; \$1,000,000 in preferred stock, and \$2,998,200 in common stock of the paper company, "all of which," both preferred and common, "shall be fully paid and unassessable, and so expressed on the face of the certificates." It thus appears that the entire transaction by which the title of the thirty-nine mills was finally vested in the Straw Paper Company was accomplished through three distinct transfers: First, from the several owners of these properties to Beard and Ramsdell; second, by assignment from Beard and Ramsdell to Stein; and, third, from Stein to the paper company. It also appears that when the mortgage was made, the legal title to the property was in the Straw Paper Company; and that, whatever be the circumstances connected with the organization of the company and the transfer from Stein, it had the legal right to make this mortgage. The master found that all of this issue of \$1,000,000 in bonds was negotiated and sold, and is now outstanding, and a valid obligation of the paper company; that they are the same bonds described in the mortgage, and that they are now due and unpaid. The original options given by the owners of the mill properties provided that \$766,000 should be paid in cash, and in the facts above stated it appears that a member of the New York firm engaged himself in raising money to pay for the bonds, and deposited over \$800,000 with the Trust Company to be disbursed to the mill owners.

The testimony also showed that the bonds were all paid for in full, and there is no testimony to the contrary. The decree of the Circuit Court also found that all of the bonds were duly issued, negotiated and sold, and were outstanding and valid obligations of the company, and the affirmance of that decree by the Court of Appeals showed that also to be its

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finding. A list of the parties to whom the bonds were delivered by the Northern Trust Company upon the request of the Straw Paper Company shows that nearly all the bonds were originally issued to Samuel Untermeyer, Philo D. Beard, John D. Hood, to members of the Chicago firm, and others more or less connected with the organization of the company. But the testimony shows that far the larger part of them had been transferred to other parties, presumably for the purpose of raising the \$800,000 deposited with the Trust Company. There is nothing to impugn the good faith of most of these holdings. It is true that these parties, in disposing of the bonds, allowed to each purchaser of a one thousand dollar bond two hundred dollars of preferred and four hundred of common stock, but they did not seem to have profited by this themselves. And if it were necessary to the negotiation of the bonds to give a *bonus* in stock, it cannot be considered in the light of a mere donation. Nor, if it were done in good faith, would it necessarily afford a ground of complaint to dissenting stockholders. *Graham v. Railroad Co.*, 102 U. S. 148. Certainly, if this *bonus* were received in ignorance of the fraud practised upon the original mill owners, and simply as an inducement to take the bonds, the dissenting stockholders could not compel the bondholders to submit to a deduction from their bonds of the par value of the stock received as a *bonus*, particularly in view of the fact that the stock might turn out to be worthless.

In addition to this, however, the contract with Stein provided that the stock to be issued to him should declare upon the face of the certificates to be fully paid and unassessable, and we know of no principle upon which it can be held that innocent bondholders can be required to deduct from the face of their bonds the amount unpaid upon their stock. The very authorities which hold that the declaration that the stock is fully paid and unassessable is not binding upon creditors, also hold that the corporation cannot repudiate it and proceed to collect either from the person receiving the stock or his transferee the unpaid part of the par value. Thus in *Scovill v. Thayer*, 105 U. S. 143, 153, in which a similar declaration was

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held to be invalid against creditors, it was said: "The stock held by the defendant was evidenced by certificates of full-paid shares. It is conceded to have been the contract between him and the company that he should never be called upon to pay any further assessments upon it. The same contract was made with all the other shareholders, and the fact was known to all. As between them and the company this was a perfectly valid agreement. It was not forbidden by the charter or by any law or public policy, and as between the company and the stockholders was just as binding as if it had been expressly authorized by the charter."

There is no doubt that, if this were a suit by creditors to enforce payment of the unpaid portion of the stock subscription, the fact that the stock certificates declared that they were fully paid and unassessable would be no defence; but it is a suit of stockholders in the right of the corporation, and as between the corporation and its stockholders the declaration that the shares are fully paid up and unassessable is a valid one. If an action by the corporation would not lie to recover the unpaid part of the subscription, then such unpaid part cannot be deducted from the bonds.

Somewhat different considerations apply to those who took part in the organization of the company, and in the purchase of the thirty-nine mills, and who received the bonds and stock of the paper company with notice of the fraudulent character of the scheme. We are not disposed to condone the offences of those who, through Beard and Ramsdell and their assignee, Stein, as their agents, purchased these plants for \$2,788,000, and immediately thereafter went through the form of repurchasing of their own agents (in fact, of themselves) the same properties at \$5,000,000. These men stood in the light of promoters of the Straw Paper Company. A promoter is one who "brings together the persons who become interested in the enterprise, aids in procuring subscriptions and sets in motion the machinery which leads to the formation of the corporation itself." Cook on Stock and Stockholders, sec. 651. Or, as defined by the English statute of 7 & 8 Vict. chap. 110, sec. 3, "every person acting, by whatever name, in the form-

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ing and establishing of a company at any period prior to the company " becoming fully incorporated. See also Lloyd on Corporate Liability for Acts of Promoters, 17. He is treated as standing in a confidential relation to the proposed company, and is bound to the exercise of the utmost good faith. Lloyd, Corporate Liability, 18; *Densmore Oil Co. v. Densmore*, 64 Penn. St. 43; *Bosher v. Land Co.*, 89 Virginia, 455. The promoter is the agent of the corporation and subject to the disabilities of an ordinary agent. His acts are scrutinized carefully, and he is precluded from taking a secret advantage of the other stockholders. Cook on Stock and Stockholders, sec. 651. " Accordingly, it has been held that, if persons start a company, and induce others to subscribe for shares, for the purpose of selling property to the company when organized, they must faithfully disclose all facts relating to the property which would influence those who form the company in deciding upon the judiciousness of the purchase. If the promoters are guilty of any misrepresentation of facts, or suppression of the truth in relation to the character and value of the property, or their personal interest in the proposed sale, the company will be entitled to set aside the transaction or recover compensation for any loss which it has suffered." Morawetz on Corporations, secs. 291, 294, 546; *New Sombbrero Phosphate Co. v. Erlanger*, 5 Ch. Div. 73; *Bagnall v. Carlton*, 6 Ch. Div. 371; *Emma Silver Mining Co. v. Grant*, 11 Ch. Div. 918.

" In those cases where the scheme of organization gives the promoters the power of selecting the directors who are to represent the company in the proposed purchase, they are bound to select competent and trustworthy persons who will act honestly in the interest of the shareholders. A purchase made from the promoters under these circumstances will not bind the company unless it was a fair and honest bargain." Morawetz on Corp. sec. 546; *The New Sombbrero Phosphate Co. v. Erlanger*, L. R. 5 Ch. Div. 73; *Brewster v. Hatch*, 122 N. Y. 349; *Simons v. Vulcan Oil & Mining Co.*, 61 Penn. St. 202; *Twycross v. Grant*, L. R. 2 C. P. Div. 469, 503; *Whaley Bridge Calico Printing Co. v. Green*, L. R. 5 Q. B. Div. 109, 111; Thompson on Liability of O. & A. 218, sec. 20.

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It is true that the options were taken from each owner of the thirty-nine mill plants severally, and that no mention was made of the number that were to be taken into the new corporation. But each option contract showed that it was the purpose of Beard and Ramsdell to organize one or more corporations with a capital of one million preferred and three millions of common stock, and with a bonded indebtedness of one million dollars. This clause of itself, as well as the whole scheme of the contract, indicates that a large number of similar options were to be obtained, and that one or more large corporations was to be organized to conduct the business. It goes without saying that it never could have been contemplated that any one or any small number of these mills, which were comparatively insignificant affairs, were to be reorganized with a capital stock of four million dollars. The oral testimony indicates that it was the understanding that all the straw paper mills in that section of the country, some seventy in number, were to be consolidated into the new corporation, and such upon the testimony before us would appear to be the fact. Now, if it were understood by the owners of these thirty-nine mills, who received in cash and stock \$2,788,000 for their plants, that Beard and Ramsdell, who held themselves out in the option contracts as promoters of the new corporation, were to transfer these options to Stein, and that the latter was to set himself up as a purchaser and resell these properties to the new corporation for \$5,000,000, it is impossible to suppose that they would have consented to the arrangement. Bound as these promoters were to deal fairly and honestly with the stockholders in the new corporation, they were guilty of apparently inexcusable conduct in excluding the mill owners from all participation in organizing the new corporation, putting in their own clerks as directors, and paying off the mill owners in stock which was really of little more than half the value they must have expected to receive. If they were unable to obtain options upon only thirty-nine out of the seventy mills, they should have made known this fact, or at least given these mill owners the benefit of the surplus stock. Of course, they were entitled to charge

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a reasonable sum for their services and expenses, but the parties who represented the substantial interests in the new corporation were entitled to be informed of the steps taken. We think that no acquaintance with legal principles was necessary to apprise these parties that they were not dealing fairly with the owners of the mills in concealing from them the facts connected with this purchase, and in dealing with the property as if they themselves were the only parties in interest.

It is difficult, however, to see how justice can be done by a reversal of the decree appealed from. This is a decree ordering a foreclosure and sale of the property to pay the bonds, to which the bondholders are clearly entitled. It finds that all the bonds were duly issued, negotiated and sold, and that they are outstanding and valid obligations of the company, and that they are now held by a large number of persons who have become the owners thereof for a valuable consideration. These bonds must ultimately be presented for redemption from the proceeds of sale, and we see nothing in the decree appealed from to prevent an inquiry being instituted as to their validity in the hands of their present holders. We are clearly of opinion that, so far as they were purchased for a valuable consideration by innocent holders, they are not subject to the set-off claimed. The question whether, so far as they are held by parties cognizant of the alleged fraud, they are subject to a set-off, is not one which properly arises in this case, where the bonds must be treated as an entirety, but is a defence applicable to each individual bondholder. Whether the corporation, or those who sue in its behalf, may hold them liable for the par value of the stock or are confined to a rescission of the transaction, is a question upon which we express no opinion.

We are therefore of opinion that the decree of foreclosure and sale appealed from must be affirmed.

MR. JUSTICE SHIRAS and MR. JUSTICE PECKHAM concurred in the result, but were of opinion that the question of fraud was irrelevant to the issue.